SGA
LAW OFFICES

Issue 24
16th December 2016

"Income tax returns are the most imaginative fiction being written today"

— Herman Wouk

NOMINAL INDEX

NOTIFICATION (HARYANA)

NEWS OF YOUR INTEREST

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News From Court Rooms

CESTAT, Mumbai : Service Tax : Outdoor catering services were provided by the co-operative society from a premise other than its own. Some portion of the cost is met by the employer and remaining by the employees directly. Service tax liability confirmed. ***(Larsen & Toubro Grahak Sahakari Sausthan Maryadit – November 29, 2016)***.

CESTAT, Kolkata : Central Excise : The excise duty evasion is pre-planned to evade duty by using others brand was planned by the appellant assessee. It is corollary that during the same period they also had the intention to evade payment of duty by way of under-valuation and surreptitious removal. Demand confirmed. ***(Emkay Investments P Ltd. – December 15, 2016)***.

CHHATTISGARH HC : Sales Tax : Whether the freight charges for transporting dolomite by the petitioners to Bhilai Steel Plant would be a part of sale price and hence exigible to sales tax? Held Yes. ***(Kasturchand Bafna – December 7, 2016)***.

P & H HC : Haryana VAT : Whether on combined reading of Section 14(6) Section 24 and Rule 33 can interest be charged from the contractor for late deposit of TDS by contractee, held that, where tax is not deposited in time interest is to be levied. ***(Cherryhill Interiors Limited – December 9, 2016)***.

CESTAT Mumbai : CENVAT credit : Invoices not in the name of the appellant but are in the name of the directors and the employees of the company. If the same have been booked as expenditure in the books of appellant credit is admissible. ***(Jaya Hind Industries Limited – June 3, 2016)***.

CESTAT, Ahmedabad : CENVAT credit: Merely because the input service tax is paid at a particular unit of the company and the benefit is sought to be availed at another unit the same is not prohibited under law. ***(Sterling Generators P Ltd. - December 1, 2016)***.

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SUBJECT INDEX

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 39 OF 2016

MITTAL FEED INDUSTRIES
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

26th August, 2016

HF ▶ Assessee

No penalty can be imposed u/s 51 on the suspicion of goods being traded in future after import instead of use in manufacturing of tax-free goods.

PENALTY – ATTEMPT TO EVADE TAX – RICE IMPORTED FROM OUTSIDE THE STATE – CLAIMED TO BE USED IN MANUFACTURING OF CATTLE FEED WHICH IS TAX-FREE – PENALTY IMPOSED BY ENQUIRY OFFICER – CONCLUSION DRAWN THAT GOODS WOULD BE TRADED INSTEAD OF USE IN MANUFACTURING OF CATTLE FEED – ATTEMPT TO EVADE TAX – ON APPEAL BEFORE TRIBUNAL – NO PRESUMPTION CAN BE DRAWN AT THE TIME OF IMPORT OF GOODS – USE OF RICE IN MANUFACTURING OF CATTLE FEED NOT DENIED – ENQUIRY AT THE STAGE OF IMPORT NOT WITHIN PURVIEW OF SECTION 51 – PENALTY DELETED – ORDER SET ASIDE - *SECTION 51 OF PUNJAB VAT ACT 2005*

Appellant is a manufacturer of cattle feed at Moga. In the normal course, he had purchased rice from outside Punjab for production of cattle feed. When the goods had reached ICC, the same were detained and detaining officer recommended penal action. During enquiry, the account books and other documents were produced. It was concluded by the officer that assessee has failed to explain as to what percentage of quantity of rice is consumed in the process of manufacturing of cattle feed. Concluding that assessee was importing rice for trade under the garb of using the same in manufacturing cattle feed, the penalty was imposed for evasion of tax. On appeal before the Tribunal.

Held:

No fault could be found in the documents which were produced at ICC. The assessee was entitled to purchase rice for manufacturing of cattle feed and in case of any misuse, the Department can subject him to enquiry during assessment proceedings. No penalty can be imposed while the goods are being brought in for future use. There is no denial to the fact that rice is one of the ingredients of cattle feed and nothing prevented the assessee to use it for improving the quality of cattle feed, even if it had not been used earlier. The imposition of penalty in the present case by Designated Officer is merely guesswork and therefore no case

for imposition of penalty is made out and the order thus deserves to be set aside. Appeal allowed.

Present: Mr. R.K. Malhotra, Advocate Counsel for the appellant.
Mr. Manjit Singh Naryal, Addl. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. The Excise and Taxation Officer-cum-Designated Officer, Information Collection Centre Ram Nagar District Patiala (herein referred as the Designated Officer), vide his order dated 25.8.2009, imposed a penalty to the tune of Rs.2,51,881/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. The appeal against the said order was dismissed by the First Appellate Authority on 9.11.2015, hence this second appeal.

2. The appellant being a partnership firm has been engaged in the manufacturing of Cattle Feed in the industrial premises at Channu Wala Road, Bagha Puma (Moga). It has been maintaining regular books of account. It has been using .the various course-grains/foodgrains in manufacturing of the Cattle Feed mainly by importing the same from outside the State of Punjab for the production of Cattle Feed. Rice is one of the ingredients for the production of Cattle Feed. The appellant purchased the rice from M/s Bismillah Rice Mills, Richha (District Bareilly) in U.P. After getting loaded the said rice in two vehicles bearing No.HR-37A-7513 and No.HR-37B.-0H2, he was bringing the same to the State of Punjab.The goods were covered by invoice No. 2/75 dated 7.8.2009 for Rs. 4,19,410/- and GR No. 3867 and the second invoice bearing No.2/76 dated 7.8.2009 for Rs.4,20,191/- was bearing GR No.193. When the drivers arrived at the ICC Ramnagar, they were stopped. -When confronted with the transaction, they produced the following documents:-

1. Sale invoice Nos.2/75 and 2/76 dated 7.8.2009 issued by M/s Bismillah Rice Mills, Richha, District Bareilly (UP) in favour of the above dealer for Rs.4,19,411/- and Rs.4,20,191/- alongwith a chalian/transfer invoice Nos.2/85 and 2/86 of even date and
2. GR Nos. 3867, dated nil issued by M/s Swarg Road Lines, J & K, Rudrapur, U.S. Nagar (Uttrakhand) and GR No.193 dated 7.8.2009 issued by M/s Shubham Road Lines, Shahjahanpur (UP) for the transportation of goods from Richha to Moga.

3. However, the Detaining Officer detained the goods while suspecting the evasion of tax on the part of the appellant and forwarded the same to the Designated Officer.

4. However, Shri Bharat Bhushan, partner of the appellant firm appeared on 10.8.2009 instead of 12.8.2009 when confronted with the facts and produced the books of account. During evidence, he disclosed that during the year 2008-09, they sold the Cattle Feed worth Rs. 6,42,19,531/-. He also produced a trading account for the year 2008-09. He also disclosed that the firm has been purchasing the raw material such as wheat, nakku, rice bran-DOC, Molasses, Mustard Cake, Mustard Cake-DOC and broken rice etc. for the manufacturing the Cattle Feed. He also .produced the purchase account for the year 2009-10 in order to show that the firm had purchased maize for Rs. 35,44,674/- and Rs.3,95,527/-, Molasses for Rs. 48,925/-, Mustard Cake for Rs. 29,20,695/-, rice bran-DOC for Rs. 21,23,208/- RS. 1,25,749/-, broken rice for Rs.6,16,955/-& Rs.16,4,23,828/- and wheat choker for Rs.7,62,250/-. The appellant further admitted that the rice in question was non basmati and the goods were taxable under the Punjab Value Added Tax Act, 2005. He could not explain as to what percentage of quantity of rice is consumed in the process of manufacturing of Cattle Feed as per prescribed standards.

He could not explain about the consumption of rice in production of Cattle Feed. The Assessing Authority while holding that the appellant has been making, import of rice for trade under the garb using the same in manufacturing of Cattle Feed and selling the same to others therefore, there was dear intention to evade the tax. As such the transaction was not covered by genuine documents. Consequently, the penalty was imposed. The appeal filed by the appellant was dismissed.

5. Arguments heard. Record perused.

6. The counsel for the appellant has contended that the action of the detaining officer was wrong as the drivers of the vehicles had voluntarily reported about the goods and the documents accompanying them. The role Of the Assessing Authority was to And out as to if the goods were accompanied by proper and genuine documents and if there was any intention to evade tax. However, the penalty was imposed only on the ground that the appellant could not give proper explanation regarding the percentage of involvement of rice in manufacturing of Cattle Feed. Had there been any discrepancy with regard to the importing of rice without any valid license, then the department would have subjected him to enquiry during the assessment proceeding. However, no penalty could be imposed only on the ground that rice could not be used for manufacturing of Cattle Feed particularly when the appellant had brought the rice under a valid Central Sales Tax number. It was not the domain of the Excise and Taxation Officer to impose the penalty on the ground that rice was being brought for sale and not for use in manufacturing of the Cattle Feed.

7. To the contrary, the State Counsel has urged that the rice being not a ingredient of the cattle feed could not be imported which out payment of Local Tax. No evidence has been led by the appellant that the rice could be used for manufacturing of Cattle Feed, therefore, inference could be drawn that the goods were brought for the purpose of trade and therefore, since the rice was taxable in the State of Punjab, therefore, the appellant having not paid the tax wanted to evade the tax.

8. After hearing the Counsel for both the parties, I find myself persuaded to the contentions raised by the Counsel for the appellant. There is no denying a fact that the appellant has been engaged in manufacturing of the cattle feed and was the owner of the factory running in the name and style of Mittal Feed Industries, Channu Wala Road, Bagha Purana, District Moga. As per the order passed by the Excise and Taxation Officer/Designated Officer in the year 2008-09, the appellant sold the cattle feed worth Rs. 6,42,19,531/-. It is also not in dispute that the goods loaded in the two trucks were accompanied by two separate bills No.75, dated 7.8.2009 for Rs.4,19,411/- and GR No. 3867 dated nil and bill No.76 dated 7.8. 2009 for Rs.4,20,191/- and GR No.193 dated 7.8.2009. The show cause notice reveals that the Designated Officer sought an explanation from the appellant as to "whether the rice is an ingredient for manufacturing of the tattle Feed?" Thus it is apparent that the Designated Officer did not find any fault with the documents or the contents of. the goods in the truck. He also did not doubt the price of the goods but the penalty was imposed only for the reason that the appellant has been bringing the goods i.e. rice for sale and not for using the same in the manufacturing of the Cattle Feed. But such suspicion in mind of the Designated Officer appeared to be based on conjectures and surmises.

9. The definition of cattle feed itself indicates the use of grains or their products which is clear from the Punjab Regulations compounded cattle feed and concentrates and mineral mixtures order 1988. Section 2 sub clause (ii) and (iii) of the aforesaid order refers to the definition of the cattle feed ingredients which reads as under:-

> (ii) Cattle feed ingredients' means any product which is suitable for animal feeding and is a source of nutrients which are required by the animals

and which are free from harmful material such as insects, fungus, infestation and toxins;

(ii) 'Compounded cattle feed' means a scientifically balanced mixture of cattle feed ingredients which contain all the nutrients derived from grains, seeds, byproducts of grain, oil, cakes and meals, tubers and roots animal products and other agro-industrial byproducts which are not harmful for animal feeding which may be in the form of meal cubes or pellets;

10. On perusal of the aforesaid definition of cattle feed it transpires that the grains are one of the ingredients to be used at the time of manufacturing of cattle feed. It appeals to the common sense that grains include rice. Similarly, the department issued the registration certificate to the appellant for manufacturing of cattle feed under the aforesaid rules of 1988. The certificate of registration as issued by the Assessing Authority under the Central Sales Tax Act on 30.6.1997 reveals that Sh. Varinder Kumar partner of the Mittal Feed Industries, Channu Wala Bagha Purana was registered for manufacturing cattle feed U/s 7 (1) and 7(2) of the Central Sales Tax Act, 1956 and he was permitted to use the following articles in manufacturing the cattle feed:-

(1) Weighing Scale

(2) Weighing bridge.

(3) Food Grains.

(4) Pulses.

(5) Oil Seeds.

(6) Cotton Fish Meals Stone.

(7) Machinery etc.

11. This certificate of registration was admittedly in operation at the time of detaining goods as referred to above. Thus, on analysis of the aforesaid documents; no iota of doubt remains in the mind of Tribunal to observe that the foods grains i.e. rice or wheat or products thereof including rice, kinky and husk were some of the ingredients including others used in manufacturing of cattle feed. Not only this, the appellant produced certificates issued by the Dairy Development Officer, Moga in order to establish that the cattle feed manufacturers were entitled to use rice broken rice, kinky and other things to manufacture cattle feed.

12. In these circumstances, a mere guesswork made by the Designated Officer that the appellant has not been using the rice earlier, therefore, this rice was not meant for manufacturing cattle feed is nothing but a camouflage to condemn the appellant who was otherwise bringing the said rice on payment of Central Sales Tax Act from outside the State of Punjab for using the same in manufacturing the cattle feed. The department has not alleged if the goods were wrongly described or their price was shown lesser then the actual price.

13. Consequently, in these circumstances, as discussed above the goods could not be detained merely on the ground that the rice is not ingredient of cattle feed therefore, the inference could be drawn that it was meant for trade. We can't speculate at this stage that the appellant would not use the rice for manufacturing the cattle feed as he was not using the same earlier prior to the year 2008-09 because he may have thought to improve the quality of the cattle feed by involving rice in it.

14. Having gone through the orders passed by the authorities below, it transpires that the observations made by the authorities below that penalty is liable to be imposed for the reason that the rice so imported by the assessee was not an the ingredient of the cattle feed, but

meant for trade, are not correct and deserve" to be set-aside, particularly, when the definition of the cattle feed indicates that rice is an ingredient of feed and as per certificate of registration the appellant could make grains for manufacturing cattle feed, therefore, the department is estopped to say that the appellant was not authorized to import rice for using the same in manufacturing the cattle feed.

15. Resultantly, the impugned orders can't be sustained end are liable to be set-aside. Consequently, I accept the appeal, set-aside the impugned orders and direct the respondents to make refund of the penalty if it was got deposited by the appellant.

16. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 387 of 2015

ADITYA BIRLA RETAIL LTD.
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

19th August, 2016

HF ▶ Assessee

Penalty imposed u/s 51 is quashed where valuation was enhanced without supporting evidence

PENALTY ATTEMPT TO EVADE TAX – VALUATION OF GOODS I.E. NAPKINS AND OTHER PAPER GOODS IMPORTED FROM DELHI TO PUNJAB – PENALTY IMPOSED ON THE GROUND OF UNDERVALUATION – ON APPEAL BEFORE TRIBUNAL – PENALTY ORDER HAS BEEN PASSED EX-PARTE – UNDERVALUATION CONCLUDED ON MERE ASSUMPTIONS WITHOUT HOLDING AN ENQUIRY REGARDING THE ACTUAL VALUE OF THE GOODS – CASE NEEDS TO BE REMANDED BACK BEING BEREFT OF REASONING – APPEAL ACCEPTED – CASE REMANDED. - *SECTION 51 OF PUNJAB VAT ACT 2005*

Appellant had purchases Napkins and other paper goods from Delhi. The consignment was intercepted by Mobile Wing, Chandigarh and on demand the requisite documents were produced. Ex-parte proceedings were carried out and it was concluded that goods were undervalued to the tune of Rs. 1,44,296/- and consequently penalty of Rs. 72,148/- was imposed. On appeal before Tribunal.

Held:
The order was passed ex-parte and the valuation was assessed on mere assumptions without holding an enquiry regarding the actual value of goods which was the appropriate method to make out the valuation of goods. The order passed by appellate authority also suffers from grave irregularities as there is no basis for him to observe that undervaluation was worked out by the Designated officer after making enquiries from the market. If the assessee would have been associated with the enquiry, then the Designated Officer would have reached the right conclusion about the price of goods. The order thus deserves to be set aside and the matter needs to be remitted back to the Designated Officer Mobile Wing, Punjab, Chandigarh to hold an enquiry after notice to the appellant about the valuation of goods and pass a speaking order.

Present: Mr. Harminder Sinagh, Advocate counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. Vide order dated 2.12.2013, the Assistant Excise and Taxation Commissioner, Mobile Wing, Punjab, Chandigarh (herein referred as the Designated Officer), while holding that goods were undervalued by 1,44,296/-, imposed penalty to the tune of Rs. 72,148/- upon the appellant which was challenged in appeal by him, whereupon the First Appellate Authority, vide order dated 17.4.2015, maintained the order of penalty and dismissed the appeal.

2. On 14.11.2013, The Excise and Taxation Officer, Mobile Wing, Punjab Chandigarh intercepted a vehicle No.DL-lLR-9624 at Chunni. The vehicle was found to be carrying napkins and other paper goods from Delhi to Chunni. On demand, the driver produced the following documents:-

1. Invoice No. 71,72,73,74 dated 13.11.2013 issued by M/s S.S. Paper convertors, Delhi.
2. GR No. 2955, dated 13.11.2013.

3. On examination of the goods the Detaining Officer suspected that the goods were not covered by proper and genuineness documents as they were under valued. Consequently, he issued notice to the owner of the goods U/s 51 (6) (b) of the Punjab Value Added Tax Act in response to which, the appellant failed to appear on 15:11.2013 whereupon the case was forwarded to the Designated Officer who also issued notice to the appellant for 2.12.2013 but none appeared before him. Consequently, the Designated Officer vide order dated 2.12.2013 observed that the appellant failed to produce the account books or other documents in order to prove the genuineness of the transaction and the goods were undervalued to the tune of Rs. 1,44,296/- therefore, he imposed penalty to the tune of Rs.72,148/- against the appellant.

4. On appeal, the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala made out a different case while observing that under valuation was worked out by the enquiry officer after an enquiry from the market people who were dealing in such goods and dismissed the appeal.

5. Arguments heard. Record perused.

6. On close scrutiny of the order passed by the Designated Officer, it appears that the order was passed ex-parte and under valuation was assessed on mere assumptions without holding an enquiry regarding the actual value of the goods, which was the appropriate method to make out the valuation of the goods carried by the driver in the truck. The order passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala also suffers from grave irregularities because it is not known as to on what basis he observed that under valuation was worked out by an enquiry officer after, an enquiry from the market people dealing in such goods. The grievances of the appellant also appear to be genuine when he submits he has not been associated in the enquiry. If he had been associates then he would have assisted the Designated Officer to reach the conclusion about the price of the goods.

7. In these circumstances, this Tribunal is of the opinion that the orders passed by the both the authorities below appear to be lacking reasons and passed without any basis, therefore, it is a fit case for remand.

8. Resultantly, this appeal is accepted, impugned order is set-aside and the case is remitted back to the Designated Officer, Mobile Wing, Punjab Chandigarh to hold an enquiry after notice to the appellant about the valuation of the goods and then pass a speaking order. The appellant is directed to appear before him on 15.9.2016.

9. Pronounced in the open court.

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SGA
LAW OFFICES

PUNJAB VAT TRIBUNAL

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APPEAL NO. 190 of 2015

GARG ADHESIVES
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

1st August, 2016

HF ▶ Assessee

Additional demand raised on account of C-Forms is quashed after the assessee submitted it before the Assessing Authority during pendency of appeal before Tribunal.

STATUTORY FORMS – C FORMS – DEMAND RAISED FOR NON-FURNISHING OF C-FORMS – APPELLANT FAILED TO PRODUCE WITHOUT FORMS BEFORE THE 1ST APPELLATE AUTHORITY – FIRST APPEAL DISMISSED – ON APPEAL BEFORE TRIBUNAL – REMAND REPORT SOUGHT FROM DESIGNATED OFFICER – REPORT SUBMITTED REGARDING THE FURNISHING OF C-FORMS – CASE REMITTED BACK – ASSESSING AUTHORITY TO DECIDE AFRESH IN ACCORDANCE WITH THE REPORT SUBMITTED - *SECTION 29 OF PUNJAB VAT ACT, 2005; SECTION 8 OF CENTRAL SALES TAX ACT, 1956*

An additional demand was raised by Assessing Authority under the CST Act 1956. The demand was on account of non-production of C-Forms. The first appeal filed against the said order was also dismissed since the assessee failed to furnish C forms even before the first appellate authority. On appeal before the Tribunal, ETO-cum-Designated Officer Jalandhar was directed to make a report as the assessee claimed that it is in possession of C-Forms. The Designated Officer submitted the report that substantial C-Forms have been submitted and the C forms qua nominal amount are yet to be submitted in the office. Accordingly, the order was set aside and case was remitted back to the Assessing Authority for deciding afresh in accordance with the report submitted.

Present: None for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. Provisional assessment for the year 2010-11, relating to the appellant firm, was framed on 15.9.2014 vide which the additional demand of . Rs.31,69,491/- was created under the Punjab Value Added Tax Act, 2005.

2. Aggrieved by the said order, the appellant filed a rectification application on 29.9.2014. The Excise and Taxation Officer-cum- Designated Officer, Jalandhar-I, vide his

order dated 14.10.2014, created additional demand to the tune of Rs.6.,76,715/- under the Punjab Valued Added Tax Act, 2005 and Rs. 1,87,760/- under the Central Sales Tax Act, 1956 with the following observations:-

> *"On 14.10.2014 Sh. Manish Garg, proprietor of the firm appeared before- the Excise and Taxation Officer-cum-Designated Officer, Jalandhar-I and produced account books. The case was examined in detail and it was noticed that reversal of the TTC amounting to Rs.24,50,644/- has been wrongly shown as refund though the same was not granted to him during the year 2010-11. As per report of the refund clerk Sh. Gurpreet Singh Malhi, the TP has not received any refund upto 31.3.2011. Similarly, calculation under the CST Act has been mixed up under part-A of the assessment which relates to PVAT Act only. The main tax demand was under the CST Act on account of short "C" forms amounting to Rs.15,98,911/- but penalty and interest have been levied thereon U/s 56 & 32 of the PVAT Act respectively. No interest and penalty is leviable on tax demand which has been raised due to short "C" forms only. Further, the Taxable Person has adjusted an ITC of Rs. 7,48,181/- against the CST payable in his VAT-20, but no claim of that ITC has been given by the designated officer while calculating that CST liability."*

3. Aggrieved by this order, the appellant preferred the appeal before the First Appellate Authority qua the liability under the CST Act wherein the appellant raised the plea that the demand was created on account of non production of "C" forms. Since the appellant failed to produce the "C" forms before the First Appellate Authority, therefore, .the appeal was dismissed on 28.1.2015.

4. Aggrieved by the said order, the appellant has filed this appeal. During the pendency of this appeal, the appellant was directed to produce the "C" forms in his possession before the Excise and Taxation Officer-cum- Designated Officer, Jalandhar-I and the officer was directed to make a report in that record. In response to which, the Excise and Taxation Officer-cum-Designated Officer, Jalandhar-I examined the "C" forms of the appellant firm and made a following report:-

> *"It is submitted that additional demand was created worth Rs. 1,87,760/-under the Central Sales Tax Act, 1956 on account of short "C" forms worth Rs.15,98,911/-. The firms submitted 4 "C" forms worth Rs. 14,45,084/- on 5.8.2015 which stand verified and "C" Forms worth balance amount of 1,53,827/- are yet" be deposited with this office."*

5. No objection to the report has been submitted by the appellant. In the light of the aforesaid report it would appropriate that the case could be sent back to the Assessing Authority for deciding the same afresh in accordance with the report submitted.

6. Resultantly, this appeal is partly accepted, impugned order is set- aside and the case is sent back to the Excise and Taxation Officer-cum- Designated Officer, Jalandhar-I for deciding the case afresh in accordance with the report made by the Excise and Taxation Officer-cum- Designated Officer, Ward No.5, Jalandhar-I qua the "C" forms.

7. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 642 of 2013

CHAUDHARY TRADERS
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

19th August, 2016

HF ▶ Revenue

Goods being transported on an escape route are liable for penalty when no explanation has been provided regarding adopting the escape route

PENALTY – ATTEMPT TO EVADE TAX – GOODS FOUND BEING TRANSPORTED ON ESCAPE ROUTE – NO INFORMATION SUBMITTED AT THE ICC – PENALTY IMPOSED U/S 51(7)(C) – ON APPEAL BEFORE TRIBUNAL – ASSESSEE NOT IN POSSESSION OF ANY DOCUMENTS REGARDING FURNISHING OF INFORMATION AT ICC – NO INFORMATION FURNISHED IN RAJASTHAN ALSO – NO DOCUMENTS PRODUCED TO PROVE THAT DRIVER ADOPTED THE ROUTE ON ACCOUNT OF BAD CONDITION OF THE ROAD – ADOPTING OF ESCAPE ROUTE CLEARLY PROVES THE INTENTION OF APPELLANT – GOODS WOULD REMAIN OUT OF BOOKS – ATTEMPT TO EVADE TAX ESTABLISHED – PENALTY UPHELD – *SECTION 51(7)(C)*

The driver of a vehicle was intercepted while bringing 275 bags of Sarson from Rajasthan to Bathinda via escape route. The information regarding the said consignment was not given at the time of entry at any ICC. The statement given by the driver was not found plausible. Penalty u/s 51(7)(c) was imposed. On appeal before Tribunal.

Held:
There is no denial to the fact that appellant was coming from Rajasthan and was to reach Bathinda. The goods were intercepted at the escape route. No information was given regarding goods at any of the ICCs. Appellant also fails to produce any document to prove that the driver adopted the route on account of bad condition of the road. It is also proved that it was not the appellant's first consignment. The adopting of escape route clearly proves the intention of appellant to keep the goods out of books in order to avoid tax. Appeal is dismissed.

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Mr. N.K.Verma, Sr. Dy. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. On 1.10.2012 the Assistant Excise and Taxation Commissioner, Fazilka apprehended a truck bearing No. RJ-13-IG-0988 when the driver was coming with the 275 bags of sarson

from Bandra (Rajasthan to Bathinda) to Punjab via escape route. The. driver was apprehended near village Modi. Since the driver had opted for the escape route in order to avoid information at the ICC sitoguno, therefore, he was confronted with the facts of the case and also regarding non-furnishing of information at the ICC Sitoguno. The driver made a detailed statement disclosing no plausible explanation, therefore, the Designated Officer, vide order dated 10.10.2012, imposed a penalty of Rs.4,62,725/- upon the appellant U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. Aggrieved by the said order, the appellant filed an appeal which was dismissed by the First Appellate Authority on 10.1.2013, hence this second appeal.

3. Arguments heard. Record perused.

4. There is no denying a fact that the appellant was coming from Rajasthan and reached Bathinda. It is also not denied by the appellant that the vehicle was intercepted at the escape route. The appellant was not in possession of any document regarding furnishing of information of the goods at the ICC, Sitoguno and he had also not furnished information regarding goods in Rajasthan. The appellant also failed to produce any document to prove that the driver adopted the route on account of the bad condition of the road. He could not explain as to why he tried to avoid giving of information at ICC Sitoguno. It is' also proved that it was not appellant's first consignment. The payment relating to the transaction has been made by the consignee after the goods were detained. The adopting of escape route clearly proves that the intention of appellant was to keep the goods out of the account books in order to avoid the tax.

5. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

6. Pronounced in the open court

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 146 of 2015

PERNOD RICARD INDIA PVT. LTD.
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

23rd May, 2016

HF ▶ Revenue

Goods purchased in the name of company which stood amalgamated in the appellant, are not entitled for Input Tax Credit.

INPUT TAX CREDIT – AMALGAMATION OF COMPANY - COMPANY A AND B AMALGAMATED AFTER THE HIGH COURT ORDERS – GOODS PURCHASED IN THE NAME OF COMPANY B AFTER THE AMALGAMATION FORMALITIES COMPLETED AND INFORMATION GIVEN TO THE DEPARTMENT – INPUT TAX CREDIT CLAIMED ON THESE PURCHASES – INPUT TAX CREDIT DISALLOWED – PENALTY U/S 56 ALSO IMPOSED – DEMAND ALSO RAISED ON ACCOUNT OF NON-FURNISHING OF D-FORMS – ON APPEAL BEFORE TRIBUNAL – INPUT TAX CREDIT NOT AVAILABLE TO COMPANY A AFTER AMALGAMATION IF PURCHASES ARE IN THE NAME OF COMPANY B KNOWING FULLY WELL THAT COMPANY HAS LOST ITS IDENTITY – COMPANY A NOT ENTITLED TO USE THE REGISTRATION NO. OF COMPANY B AFTER CANCELLATION OF REGISTRATION CERTIFICATE – INPUT TAX CREDIT RIGHTLY DISALLOWED – PENALTY ALSO SUSTAINABLE AS EXCISE PERMITS USED FOR UNLAWFUL GAIN – TIME GIVEN FOR FURNISHING OF D-FORMS - APPEAL PARTLY ALLOWED TO THE EXTENT OF FURNISHING OF D-FORMS ONLY - *SECTION 13 OF PUNJAB VAT ACT 2005*

The company Rocky Distilleries Pvt. Ltd (RDPL) amalgamated into appellant company namely Pernod Ricard India Pvt. Ltd. w.e.f. April 2007. The said amalgamation was approved by Delhi High Court as well as Punjab and Haryana High Court. In consequence, the Assessing Authority was also informed about change u/s 76 read with Section 23 of Punjab VAT Act.

A supplier M/s AB Grain Spirits Pvt. Ltd. continued to supply spirit to RDPL by quoting its TIN Number. Appellant claimed Input Tax Credit on the purchases made by RDPL from AB Grain Spirits on the ground that it is entitled to Input Tax Credit for the purchases made by RDPL since it got amalgamated in the appellant company. The Assessing authority disallowed the claim of Input Tax Credit for certain purchases made in this fashion. Penalty u/s 56(e) was also imposed in addition to interest. Demand was also raised on account of non-furnishing of D-Forms for the sale made to CSD. On appeal before Tribunal.

Held:

As a matter of fact, RDPL had lost its entity for all intents and purposes after it got amalgamated into appellant company. Even the information was given to the Assessing

Authority claiming that henceforth the business would be continued in the name of appellant company. However, the Excise Permits were obtained in the name of company which had lost its identify knowing very well that no purchases can be made in its name after that date. RDPL was misusing the VAT No. And the appellant could not claim the ITC for the purchases made by RDPL. On totality of facts, ITC is not admissible and considering the conduct of assessee, the imposition of penalty is also justified. Accordingly, the impugned order deserves to be upheld.

It is claimed by assessee that it is in possession of D-forms. For this purpose, the case is remitted back to Assessing Authority to examine and verify D-forms and pass the order afresh.

Appeal is partly allowed to this extent only.

Present: Mr. Chaman Lal Sharma, Advocate Counsel for the appellant
Mr. N.K.Verma, Sr. Dy. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This appeal is directed against the order dated 8.8.2014 passed by :he Deputy Excise and Taxation Commissioner (A) Patiala Division, Patiala dismissing the appeal against the order dated 27.9.2012 disallowing the ITC and creating additional demand to the tune of Rs.25,00,818/- under the Punjab Value Added Tax Act, 2005.

2. M/s. The Pernod Ricard India Pvt. Ltd. (herein referred as the Appellant Company) is engaged in the business of manufacturing IMFL and has its principle place of business at Village Haripur, Derabassi (Mohali). The appellant is duly registered under the Punjab VAT Act, 2005 as well as Central Sales Tax Act. M/s Rocky Distilleries Pvt. Ltd. (herein referred as RDPL) having its office Village Gholumazra 25th Mile Stone Chandigarh, Ambala Highway Derabassi is the sister concern of the appellant company.

3. With intention to merge RDPL in the appellant company, the resolution was passed to amalgamate the RDPL with the appellant company, w.e.f. April, 2007. Consequently, the appellant company moved an application U/s 391 of the Companies Act before the Hon'ble Delhi High Court for seeking approval of the scheme of amalgamation by the High Court. The application was accepted vide order dated 30.10.2007 by the Hon'ble Delhi High Court. Thereafter, the appellant company moved a petition before the Punjab and Haryana High Court for the approval of the scheme of amalgamation. The said application was accepted vide order dated 11.1.2008. Consequent upon the approval by the Hon'ble High Court the appellant moved an application with registrar of companies for issuing of the fresh certificate of incorporation, where upon the registrar of companies issued the fresh certificate of incorporation on 27.3.2008. The appellant company informed the Assessing Authority regarding the amalgamation of RDPL with the appellant company as provided U/s 76 read with Section 23 of the Act of 2005 in the prescribed form VAT-22. It was also informed to the department that an application for cancellation of the license has already been moved to the Excise and Taxation Commissioner, Punjab. The Excise and Taxation Commissioner vide its letter No. E/3/2009/74, dated 2.1.2009 accorded his sanction to change the name in the Excise license. Accordingly, the appellant company informed the department about the change U/s 76 read with Section 23 of the Punjab Value Added Tax Act, 2005.

4. The necessary information has also been sent with regard to .the aforesaid change but M/s A.B. Grain Spirits Pvt. Ltd. continued to supply “Grain Neutral Spirit" to M/s Rocky Distillers by the quoting its TIN Number.

5. The appellant has claimed that on the purchases made by the Rocky Distillers from M/s A.B. Grain Spirits Pvt. Ltd., the appellant is entitled to the ITC on account of merger of

Rocky Distillers on Pvt. Ltd. with it. The respondent/department visited the premises of the appellant on 19.2.2009 and confronted the appellant with the transactions in question, in response to which the appellant appeared before the Excise and Taxation Authorities and explained that M/s A.B. Grain Spirits Pvt. Ltd had mentioned the TIN Number of Rocky Distillers Pvt. Ltd. over the invoices by mistake.

6. The Assessing Authority vide order dated 27.9.2012 while framing, the assessment for the year 2008-09, disallowed the ITC to the tune of Rs.7,62,500/- and also imposed penalty to the tune of Rs.15,25,000/- U/s 56 (E) of the Punjab Value Added Tax Act, 2005 consequently, created additional demand to the tune of Rs.25,00,818/- which included interest also. It was also pleaded that in addition to the above, the Assessing Authority had shifted a turnover of Rs.26,51,000 (rounded off hundred) taxable @ 4% to turnover of sale taxable @12.5%. These created a demand of Rs.2,25,347/-on this account without assigning any reason to justify such shift. The appellant further claims that he had furnished "D-forms" (20) covering the entire turnover of sale of Rs.78,49,449/- made to CSD. The admitted turnover of the appellant, which was taxable @4%, was Rs.1,24,17,600/-. Thus the appellant in addition to the challenging of wrong shift over of his turnover, has pleader for consideration of "D" Forms. He also challenged validity of the purposed penalty and interest to be imposed by the Assessing Authority.

7. The Assistant Excise and Taxation Commissioner did not agree with the contentions as raised by the counsel for the appellant; disallowed the ITC and imposed tax, penalty and interest. The appeal filed by him was also dismissed, on 8.8.2014.

8. Arguments heard. Record perused.

9. As far as the merger of the (M/s Rocky Distillers Pvt. Ltd. (herein referred as RDPL) of the appellant company is concerned, the company passed a resolution as far back as in the year 2007 to merge RDPL with the appellant company w.e.f.1.4.2007. The legal formalities, in order to give final shape to the merger, were initiated by filing a writ petition U/s 391 of the Companies Act before Delhi High Court. The latter allowed the application subject to approval of the scheme vide order dated 30.10.2007.

10. Pursuant to the said order, the appellant moved an application before the Hon'ble High Court, Chandigarh who approved the scheme or amalgamation vide order dated 11.1.2008. Thereafter, the application moved by the appellant before the registrar companies for issuance of a fresh certificate of incorporation was accepted and the certificate was issued on 27.3.2008. Thus, as a matter of fact, the RDPL had lost its identity on 27.3.2008 for all intents and purposes when the name of the company was changed. Sanction of the Excise and Taxation Commissioner Punjab on 2.1.2009 was also accorded regarding the change of name on the application of the appellant on 22.10.2008 under VAT-5. Even the RDPL filed its final return VAT 20 w.e.f. 1.1.20.2009 to 5.1.2009 regarding all his previous transactions with the intention not to enter any further transaction in its name in future. It is further noticed VAT-5 was filed on 22.10.2008 for changing the name and cancellation of the VAT number M/s Rocky Distillers Derabassi. It was submitted in the said application that hence forth the business would be continued in the name of the appellant company. The department vide letter dated 2.1.2009 (received by the appellant on 5.1.2009), also informed the Rocky Distillers that name has been changed.

11. It is also pertinent to mention here that with reference VAT-5 submitted on 22.10.2008. The appellant company surrendered the original VAT registration certificate of Rocky Distillers Pvt. Ltd. which was received in the office on 3.1.2009. Thus from 27.3.2008 or at the most on completion of all the formalizes which ended on 3.1.2008, M/s Rocky Distillers Pvt. Ltd. could not use its the name and TIN number for entering, into any transaction to make any purchase and receive any permits on the basis of the said VAT

number. However, M/s Rocky Distillers while throwing all the norms to the wind, on the basis of its on TIN number vide dated 30.3.2005, invoice No. 354, 355, 356, 357 all dated 15.1.2009, 365, 366, 367, dated 22.1.2009, 371, dated 23.1.2009, 372 and 373, dated 29.1.2009 made purchases of the natural alcohol from M/s AB Grain Spirits under permits dated 12.1.2009 to the tune of Rs.61,202 lacs (by using VAT No.03501104123) . The details of the purchases from the A.B. Grain Spirit Pvt. Ltd. are submitted as under:-

AB Grain Spirits Pvt. Ltd.				
Invoice No.	Invoice Date	Amount	VAT 12.5%	Total amount
354	15.1.09	610,000	76,250	686,250
356	15.1.09	610,000	76,250	686,250
357	15.1.09	610,000	76,250	686,250
355	15.1.09	610,000	76,250	686,250
367	22.1.09	610,000	76,250	686,250
366	22.1.09	610,000	76,250	686,250
365	22.1.09	610,000	76,250	686,250
371	23.1.09	610,000	76,250	686,250
373	29.1.09	610,000	76,250	686,250
372	29.1.09	610,000	76,250	686,250
	Total	6,100,000	762,500	6,862,500

12. The conduct of the appellant is not fare as the appellant knowing fully well that the RDPL despite having lost its identity was misusing the VAT Number issued to him by the department. These- purchases are not against the previous orders but against the permits dated 12.1.2009. As on that date, Rocky Distilleries Pvt. Ltd. had lost its identity even VAT number has been surrendered, the RDPL cheated and induced the department and got issued the permits knowing fully well that the RDPL had lost its identity. All this appears to have been done by the appellant intentionally for unlawful gains. The appellant has tried to produce the letters given to some companies amendment of the name of the appellant and record the name of appellant company in place of RDPL and these companies did so, but the same could not be done as the permits were got obtained by M/s Rocky Distillers Pvt. Ltd. and the same could be used by the said company only RDPL could not use those permits as it had lost its identity, consequently the suppliers could not supply the goods to the appellant company against the permits issued under name of a non-existent company. The appellant company could not use the registration number which was allotted to Rocky Distillers Pvt. Ltd. At the same time, after the merger, the appellant company could not use the TIN number of the company which had lost its identity, particularly when the company had already informed about the merger by way of furnishing VAT-5 with the department on 22.10.2008. After M/s Rocky Distillers Pvt. Ltd. ceased to exist from the date of merger and letter of surrender of the TIN number any transaction made by the RDPL was at the risk cost of the company having lost its identity as well as the supplier. However, the appellant company does not deserve any benefit of the transaction made by the RDPL on the basis of the said TIN number.

13. It is not a case where the supplier in good faith mentioned the name of the RDPL on the invoices but the said transactions were pursuant to the permits got obtained by the non-existent company from the Excise Department on 12.1.2009, 22.1.2009, 23.1.2009 and 29.1.2009 respectively, therefore, it would be concluded that the RDPL obtained the permits

after the merger and received the goods from the suppliers on a cancelled TIN number, therefore the appellant could not claim any ITC on the basis of the purchase of such goods.

14. Having examined the scheme of amalgamation on the basis of which appellant claims that even on merger, the RDPL could transact business and for which the appellant company was responsible for any loss or benefit derived out it of it, the scheme of amalgamation does not provide for any such provision which permitted the RDPL to transact any business on the old TIN number even after its merger and surrendering of the TIN number.

15. It has been contended that the Assessing Authority was not justified to create additional demand to the tune of Rs.2,25,347/- on the sales made to the canteen store department by the appellant. In this regard it may be observed, that since the proper 'D' Forms have not been submitted therefore, the demand, was justified. However, the counsel for the appellant states that he has already submitted the 'D' Forms which still needed verification. On the other hand, Mr. Verma states that the department was ready to verify the 'D' forms which have been submitted after passing of the judgment by the First Appellate Authority. Having heard the contentions, the case could be remitted back to this extent that Assessing Authority would examine the genuineness of the 'D' forms and then decide the matter regarding the demand of Rs.2,25,347/-.

16. As regards next contention that the authorities were not justified for imposing penalty and interest over the demand of tax raised against the appellant, in this regard, it may be observed that it is not a simple case of claiming of ITC by the appellant company over the purchases made by them or their concern which has merged in the appellant company. It is not a case which falls U/s 13(11) of the Punjab VAT Act. In the present case actually even after the merger of the RDPL and after RDPL surrendered its VAT number to the department and the name of the RDPL was changed, the RDPL induced the department authorities to issue them permits for purchase neutral Alcohol worth Rs.61,00,000/- for which now the RDPL wants to claim the benefit of ITC through the principal company (appellant), the conduct of the RDPL or the appellant company is not appreciable and deserves to be condemned. In these circumstances no other- inference except that the appellant firm which had vested interests misused permits for unlawful gains therefore, it was not entitled to derive any benefit of the transactions which were conducted on a different VAT number then which it was holding.

17. Having perused the orders passed by the authorities show below the same appear to be well reasoned and well founded qua the disallowance of the claim of ITC on the purchases made by the RDPL. Consequently, no interference is called for on this issue at my end. However as regards the demand of Rs.2,25,347/-, the case is remitted back to the Assessing Authority (Assistant Excise and Taxation Commissioner, Mohali) to examine and verify the `D' forms and pass the order afresh. Accordingly, the appeal is partly allowed in the aforesaid terms.

18. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 165-171, 241 OF 2014

JALANDHAR ENGINEERING CO.
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

26th May, 2016

HF ▶ Revenue

Permission granted by Commissioner to the Designated Officer for re-assessment proceedings need not be speaking order if he has approved the grounds given by the Designated Officer while seeking permission.

ASSESSMENT – REASSESSMENT – PERMISSION GRANTED BY COMMISSIONER – APPROVAL GIVEN ON THE BASIS OF DETAILED GROUNDS SEEKING PERMISSION BY DESIGNATED OFFICER FROM COMMISSIONER – NO FAULT CAN BE FOUND IN THE ORDER OF COMMISSIONER GRANTING PERMISSION IF HE APPROVES THE REQUEST – SCOPE OF REASSESSMENT VERY WIDE – REASSESSMENT ORDER CAN BE PASSED BY OFFICER OTHER THAN THE OFFICER WHO ORIGINALLY PASSED THE ORDER – REST OF THE ISSUES CAN BE TAKEN UP IN THE APPEAL FILED AGAINST RE-ASSESSMENT ORDER – NO GROUND FOR INTERFERENCE IN THE ORDER OF COMMISSIONER GRANTING PERMISSION – APPEAL DISMISSED. - *SECTION 29(7) OF PUNJAB VAT ACT 2005*

Assessment of the dealer was framed by the Assessing Authority in the requisite time. Thereafter, the re-assessment proceedings were initiated for which a Notice was issued u/s 29(7) of Punjab VAT Act. Permission was sought from the Excise and Taxation Commissioner giving reasons for re-assessment. The Commissioner approved the same and conveyed it to the Designated Officer. The said order of Commissioner was challenged before the Tribunal.

Held:

The basis of order granting the permission is the reasons given by Designated Officer while seeking approval of the Commissioner. The section does not require the passing of detailed or reasoned order as it is the subjective satisfaction of the commissioner for passing such order. It is also not required that reassessment should be made by the same officer who passed the original order so long as he is the Designated Officer as required under the Act. Rest of the issues regarding limitation and scope of re-assessment can be taken up by the assessee in the appeal pending against the reassessment order. If the order granting permission is read with the letter issued by the Designated Office, then no doubt remains that Commissioner had considered the grounds and granted permission. Finding no merit in the appeal, it is dismissed.

Cases referred:

- *A.B Sugar Ltd. Vs State of Punjab (2010) 15 STM 90 (P & H)*

- *Navin Metals & Anothers Vs Commissioner of Sales Tax UP (1995) 97 STC 432 (All)*
- *Manaktala Chemicals (P) Ltd., Vs State of UP (2007) 5 VST 284 (All)*
- *JT (India) Exports and anothers Vs UOI (2003) 132 STC 22 (Del)*

Present: Mr. G.R. Sethi, Advocate Counsel for the appellant.
Mr. N.K.Verma, Sr. Dy., Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This order of mine shall dispose off eight connected second appeals No. 165, 166, 167,168,169, 170, 171 and 241 of 2014 against the order dated 29.1.2014 passed by the Excise and Taxation Commissioner, Punjab Patiala granting permission to make the re-assessment framed for the years; 2009-10, 2010-11 or 2011-12 (as involved in these cases). Since all these appeals involve the common questions law, therefore these are decided together.

2. The facts in brief, as picked up from the appeal No. 165 of 2014 M/s Jullundhur Engineering Company Village Nurpur versus State of Punjab, are that earlier the original assessment in all the aforesaid cases was filed on time. However, thereafter as per Rule 49 of the Punjab Value Added Tax Act, 2005 . notices for re-assessment were issued. On the grounds which are detailed as under:-

1. That your local sale amounting Rs.23,98,40,011/- needs verification from your books of account.
2. That you have made interstate sale amounting to Rs.5,77,360/- but you have not submitted the required statutory forms "C".
3. That you have made purchases amounting to Rs.23,83,85,869/- which need verification from your books of account.
4. There is difference in sale and purchases as per VAT-2C and trading account furnished alongwith balance sheet.

3. However, before issuing notice for reassessment U/s 29 (7) of the Act, permission was sought from the Excise and Taxation Commissioner for making amendment in the assessment for the aforesaid reasons which was granted by the commissioner and the same was conveyed vide memo No. VAT-3-2013/DPO103403082123, dated 29.1.2014. The appellant has filed the. appeal against the said order granting permission

4. The counsel for the appellant did not appear in the cases despite the case was called several times, therefore, I had to decide the same exparte on 3.9.2015, however the said order has been recalled on the request of the counsel.

5. The counsel is ready for arguments in the main appeal therefore, I have heard the counsel for the appellant Sh. G.R. Sethi Advocate as well as Shri. N.K. Verma, Sr. Dy, Advocate General for the State on merits I have also perused the record of the case.

6. The counsel for the appellant has urged that the order dated 29.1.2014, granting permission by the Excise and Taxation Commissioner, Punjab to make reassessment is lacking reasons. However he has admitted that on the basis of the orders granting permission, the reassessment has already been made. The appeals against which are already pending before the Deputy Excise and Taxation Commissioner and have not so for been decided by him and he has challenged the issue in question in those appeals also. It has further been contended that the order granting permission has not been communicated to the appellant. He has also placed

reliance upon the judgment delivered in case of Ajanta Industries and others Vs the Central Board and others decided on 5.9.2015 and also in case Pankaj Motor Pvt. Ltd. Vs the State of Punjab (2016) 52 volume page/346 PHT, in Order to contend the order must contain, the grounds which prompt the Excise and Taxation Commissioner to grant, permission and the order of reassessment should be passed by the same officer, how had passed the original order.

7. Heard. Before I proceed to examine the order granting permission, I need to reproduce Section 29(7) of the Act 2005, in order to find out, "whether the order of re-assessment is within the parameters of the Act?" Section 29(7) of the Act reads as under:-

SECTION 29 (7) *"The designated officer may, with the prior permission of the Commissioner, within a period of three years from the date of the assessment order, amend an assessment, made under sub-section (2), if he discovers under-assessment of tax, payable by a person for the reason that ,-*

(a) such a person has committed fraud or willful neglect; or

(b) such a person has misrepresented facts; or

(c) a part of the turnover has escaped assessment.

PROVIDED THAT no order amending such assessment, shall be made without affording an opportunity of being heard to the affected person."

8. The provisions as envisaged U/s 29 (7) of the Punjab VAT Act, 2005 are very wide in nature and scope. Even when part of the turn over has, escaped assessment, the Designated Officer, with the prior of approval of the Commissioner, can proceed to make reassessment.

9. Now coming to the order granting permission (impugned order), it may be observed that the order dated 29.1.2014 is not the original order passed by the Commissioner. However, on examination of the record, it transpires that the letter sent by the Designated Officer for seeking permission contained all the grounds in detail which were duly perused by the Commissioner and thereafter he approved request for making amendment of the assessment.

10. The Section does not require the passing of detailed or reasoned: order. It is subjective satisfaction of the commissioner for passing such order.

11. The appellant in order to support his contentions has relied upon the following judgments:-

(i) *A.B Sugar Ltd. Vs State of Punjab (2010) 15 STM 90 (P & H)*

(ii) *Navin Metals & Anothers Vs Commissioner of Sales Tax UP (1995) 97 STC 432 (All)*

(iii) *Manaktala Chemicals (P) Ltd., Vs State of UP (2007) 5 VST 284 (All)*

(iv) *JT (India) Exports and anothers Vs UOI (2003) 132 STC 22 (Del)*

12. The issues contained in all the judgments as referred to above para is quite different then the issue involved in the present case. As regards the question that no proper service was effected upon the appellant before- passing such order and that the order was not communicated to the appellant In this regard reference could be made to Section 29 (10-A) of the Punjab VAT Act, 2005 which reads as under:-

"Notwithstanding anything to the contrary contained in any judgment decree or order of any court Tribunal or other authority and the order passed by the Commissioner under sub-section (4) prior to commencement of Punjab Value

Added tax Act (Second Amendment Act, 2013) shall not be invalid on the ground of prior ser/ice of notice or the communication of such order to the concerned person."

13. As regards the contention that the order of reassessment should be passed by the same officer who passed the original order, it may be observed that the laws never required the same officer to pass the order of reassessment who may not be in the office by way of suspension, retirement transfer or dismissal but the officer making the reassessment should atleast be, the Designated Officer as required under the Act and competent to pass such order.

14. The issue regarding scope and limitation to frame the reassessment, the same could be decided by the authorities sitting to decide the appeal against the main order. Since the present appeal is against the order granting permission, therefore, I limit the scope of the appeal to that extent only. However, as precaution I have discussed all the grounds as raised for, challenging the permission granted for making reassessment. The order granting permission appears to be within the scope of Section 29(7) of the Act.

15. Even otherwise, in the instant case, there is no dispute that notice was issued to the appellant which is apparent from the fact that the appellant had challenged the notice before the Hon'ble High Court, however, he later on had withdrawn the writ petition. The communication of order admittedly was made to him. As regards, the speaking nature of the order, if the order granting permission is read with the letter issued , by the Designated Officer then no doubt remains that the Commissioner had well considered the grounds and had granted permission. Therefore, the order granting permission could not be termed as non speaking.

16. Resultantly, finding no merit in the appeals, the same are hereby dismissed. Copy of the order be placed in all the eight connected appeals.

17. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 498 OF 2014

ALSTRONG ENTERPRISES INDIA PVT. LTD.
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

19th August, 2016

HF ▶ Assesee

Penalty under section 51(7) is not attracted in a case where the goods are being supplied to Rail Coach Factory as per its specifications.

PENALTY – ATTEMPT TO EVADE TAX – GOODS BEING CARRIED AS PER SPECIFICATIONS OF RAIL COACH FACTORY – DETAINED ON THE GROUND OF MISDESCRIPTION AS THE GOODS LOADED IN VEHICLE OF SINGLE TYPE BUT IN THE INVOICE TWO TYPES MENTIONED – GOODS REJECTED BY RAIL COACH FACTORY – REJECTED MATERIAL DULY REPORTED AT THE ICC – GOODS BEING CONSIGNED AGAIN AFTER REJECTION OF MATERIAL – NO ATTEMPT TO EVADE TAX POSSIBLE – GOODS MEANT FOR RAIL COACH FACTORY – CANNOT BE SOLD ANYWHERE ELSE – NO CASE FOR PENALTY MADE OUT – PENALTY DELETED - *SECTION 51 OF PVAT ACT 2005*

Mobile Wing Chandigarh intercepted a vehicle carrying goods from Zirakpur to Jammu. The penalty was imposed after concluding that the goods and vehicle were of single Type and did not match with the description of goods mentioned in the invoice where Two types of goods were mentioned. It was also found that there is difference in the rate of goods as per GR. It was contended by the assessee that initially the goods were supplied to Rail Coach Factory Kapurthala but on inspection the same did not conform to the requirements of consignee and the same was rejected by the officer. The goods were sent back to its manufacturing unit at Jammu which was duly reported at ICC. After the goods were rejected and were taken to Jammu, the same were sent back to Zirakpur and were not meant for trade. The appellant had never suppressed the goods as he had also claimed excise duty which had been deposited on account of sale of the goods and, thereof, question of evasion does not arise. Moreover, the goods were manufactured again and supplied to Rail Coach Factory thereafter against a new Invoice and VAT was duly charged and paid to the Govt. On totality of facts and circumstances, it transpires that the penalty has been imposed on frivolous grounds and the order passed bythe Designated Officer deserves to be set aside.

Present: Mr. Varun Chadha, Advocate Counsel for the appellant.
Mr. N.K. Verma , Sr. Dy. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This appeal is directed against the order dated 21.8.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patialal dismissing the appeal against the order dated 10.10.2013 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Punjab, Mohali imposing a penalty of Rs. 10,80,000/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. Brief facts of the case are that on 26.9.2013, the Excise and Taxation Commissioner, Mobile Wing Punjab, Chandigarh intercepted a vehicle No. HR-37A-5680 while it was carrying goods i.e. aluminium sheets from Zirakpur to Jammu. He suspected that goods were not covered by proper and genuine documents. The goods loaded in the vehicle were of single type and did not match with the description of goods i.e. two types mentioned in the invoice No. 114000266, dated 23.9.2013 and there was also variation regarding quantity. According to the GR No. 27652, dated 26.9.2013 and No. 7579, dated 23.9.2013 weight of the goods was 15 MT but on actual weighment, it came out to be 13.010 MT. No proper information was given at the ICC. The Detaining Officer issued notice to the owner of the goods, in response to which Praveen Sharma, Manager of the appellant firm appeared before him but failed to produce the account books. Consequently, the case was forwarded to the Designated Officer.

3. Mr. Praveen Sharma, on behalf of the appellant appeared again before him but he failed to explain the discrepancy regarding single type of goods loaded in the truck and about the mis-match of the weight with the invoice No. 44000266, dated 23.9.2013 and also about number of pieces. He also could not explain about the recording of wrong weight in the invoice whereas the actual weight of goods was 13.00 MT. He also could not disclose as to why proper information was not given at the ICC. To this, he explained that goods were specially designed and were meant for Rail Coach Factory, Kapurthala, but since on inspection the goods, the.same did not conform to the requirements of the consignee, therefore, the same were rejected by the officer of the Rail Coach Factory, consequently, the goods were sent back to its manufacturing unit at Jammu. There was no intention on the part of the appellant to evade the tax. The goods were duly reported at the ICC Madhopur when the vehicle had entered into the State of Punjab. The goods were excise paid. Since the goods were rejected, therefore, the Company had also claimed the CENVET. There was no mis-description in the GR meant for delivery of rejected goods from Zirakpur to Jammu and the invoice was bearing a specific note "Not for sale". The goods were detained when these were on their way back to the manufacturing unit of the appellant and before these reached Madhopur as such question of evasion of tax does not arise.

4. To the contrary, the State Counsel has vehemently contended that since the appellant could not explain about the mis-description in the document, therefore, it would be deemed that the goods were not covered by the genuine documents.

5. Arguments heard. Record perused.

6. On examination of the record and after hearing the arguments of both the parties, it is revealed that the appellant company had an order for supply of aluminium sheets to Rail Coach Factory, Kapurthala and pursuant to the said order, the appellant company got manufactured the said specific goods, (563 aluminium sheets) in number and had dispatched the same through excisable invoice No. 1140002667, dated 23.9.2013 to its Zirakpur Office for onward supply at Kapurthala. The goods were reported at the ICC, Madhopur, while entering into the State of Punjab on 24.9.2013 and reached the Zirakpur on that very day. The documents further reveal that the official of Rail Coach Factory, Kapurthala inspected the goods but rejected the same due to shade variation as revealed from the certificate dated 26.9.2013 issued by the competent authority, whereupon the appellant loaded the goods in another truck and got issued GR No. 27652, dated 26.9.2014. Out of 563 the total sheets, 533 sheets were rejected therefore,

they were sent back. The GR No. 27652 dated 26.9.2013 clearly reveals that the goods were not meant for trade as the same were rejected and returned from Zirakpur to Jammu and were accompanied by certificate of the company clearly mentioning that it has dispatched the goods to their own manufacturing unit situated at Sambha in the State of Jammu and Kashmir. The authorities appear to have doubted the transaction on account of some cutting over the GR. But the same is of no consequence as the circumstances speak for themselves that the goods were not meant for trade and the same were returned as rejected to its own unit.

7. When the goods had entered into the State of Punjab on account of supply on 24th September, 2013 to Rail Coach Factory, Kapurthala, these were duly reported at the ICC. The appellant had never suppressed the goods as he had also claimed the excise duty which he had deposited on account of sale of these goods, therefore, the question of evasion of tax did not arise.

8. Even otherwise, after the goods were sent back, the same were again manufactured as per specific direction of Rail Coach Factory, Kapurthala and these were again sent to Zirakpur vide new invoice No. 1140002801, dated 14.10.2013 alongwith GR. Those goods were again reported at the ICC Madhopur and after reaching Zirakpur, the appellant had issued new invoice in the name of Rail Coach Factory, Kapurthala and the VAT was duly charged and paid to the government. Since the goods were prepared against specific order as per specific design demanded by the Rail Coach Factory, Kapurthala, therefore, such goods could not be sold anywhere else. Therefore, the plea setup by the department is that the goods were changed and did not match the invoice does not appeal to the judicial conscience.

9. Having duly examined the record of the case, it transpires that the Detaining Officer as well as the Designated Officer have not gone to the depth to examine core issue involved in the case but appear to have been allured by the penalty which could be recovered on the frivolous grounds. Similarly, the order passed by the appellate authority is without application of mind.

10. Resultantly, this appeal is accepted, impugned order is set aside and the order of penalty imposed against the appellant stands quashed.

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 310 OF 2015

BANSAL SCRAP STORE
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

17th November, 2016

HF ▶ Revenue

Vehicle apprehended at escape route and no plausible explanation tendered for proving it to be an intrastate transaction attracts penalty.

PENALTY- CHECK POST / ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – ESCAPE ROUTE – INGENUINE DOCUMENTS – GOODS IN TRANSIT APPREHENDED – DOCUMENTS PRODUCED SHOWING MOVEMENT FROM MANSA TO MANDI GOBINDGARH – DISCLOSURE BY DRIVER REGARDING GOODS COMING FROM SIRSA, HARYANA TO JHUNIR, PUNJAB WITHOUT INFORMING AT ICC – DOCUMENTS SHOWING INTRASTATE TRANSACTION HANDED OVER BY THE OWNER AFTER ENTERING PUNJAB – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL - HELD: FACTUALLY, ICC AT SARDULGARH FALL MUCH BEFORE JHUNIR AND THERE WAS NO OCCASION FOR APPELLANT TO HANDOVER THE BILLS BEFORE GOODS REACHED JHUNIR – HAD THEY BEEN HANDED OVER AT SARDULGARH, THEN NO REASON TO TAKE THE VEHICLE ON ESCAPE ROUTE – ATTEMPT TO EVADE TAX ESTABLISHED – CHALLENGE TO JURISDICTION OF OFFICER U/S 51 BASELESS IN VIEW OF NOTIFICATION DATED 2015 – APPEAL DISMISSED – *S.51 OF PVAT ACT, 2005.*

Facts

The vehicle carrying goods was apprehended near Sunam Road on the escape route. The driver produced invoices issued by appellant showing movement from Jhunir (Punjab) to Mandi Gobindgarh. The driver disclosed that the goods were loaded from Sirsa, Haryana and had not generated any form at ICC at time of entry into Punjab. It was further stated that the documents were handed over to them by the owner of goods after they entered Into Punjab. Penalty u/s 51 was imposed. An appeal is filed before Tribunal contending that the transaction could be divided into two parts. In first stage (interstate transaction) goods moved from Haryana to Punjab after VAT D-3 was generated for crossing Haryana Border and stood completed much before reaching the ICC. In second stage, when it reached Sardulgarh in Punjab, two bills were issued by appellant for delivery at Mandi Gobindgarh, thereby rendering it an intrastate transaction. Also, jurisdiction of officer is challenged in this case.

Held:

The goods were tipped for Jhunir and ICC Sardulwala falls on Sirsa-Jhunir road and comes before one reaches Jhunir. The appellant had no occassion to hand over documents to driver at Sardulgarh. This story is cooked up to project it was an intrastate transaction. Even if they were handed over at Sardulgarh, there was no reason for drivers to adopt the escape route. This shows that the appellant had planned all this to evade tax.

The contention that the AETC mobile wing had no jurisdiction to try the case against the appellant is also baseless in view of the notification issued specifying area of jurisdiction.

The appeal is dismissed.

Present: Mr. K.L. Goyal, Sr. Advocate alognwith Mr. Rohit Gupta, Advocate Counsel for the appellant.
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This appeal is directed against the order dated 6.2.2015 passed by the First Appellate Authority dismissing the appeal of the appellant against the order dated 31.1.2013 passed by the Designated Officer, Mobile Wing, Bathinda imposing a penalty to the tune of Rs. 2,84,282/- U/s 51(7)(c) of the Punjab Value Added Tax Act, 2005.

2. On 24.1.2013, the drivers alongwith vehicles No. PB-13J-9377 and PB-08AA-9165 loaded with iron scrap were checked by the Excise and Taxation Officer, Mobile Wing, Bathinda near Bhikhi on Mansa, Sunam Road. When confronted with genuineness of transactions regarding consignments as carried by them in two trucks, the drivers produced two different invoices No. 291 and 309 dated 23.1.2013 (manually prepared) issued by the appellant i.e. Bansal Iron Scrap store village Jhunir in favour of Sh. Anandsar Steels, Motiakhan, Mandi Gobidngarh. The details of the documents so produced by the drivers are reproduced as under:-

1. GR No. 453 and 459, dated 23.1.2016 of the Jai Baba Bhai Gurdas 1109 Canter Union, Mansa.
2. Bill No. 3 and 4 dated 23.1.2013 of M/s Bansal Scrap Store, Jhunir issued in favour of M/s Shri Anandsar Steel, Mandi Gobindgarh for Rs. 2,49,432/- and Rs. 3,19,132/- respectively.

3. When asked about the place of loading of the goods in the vehicles, both the drivers disclosed that they had loaded the goods from Sirsa (Haryana). They also admitted that they did not generate information at any ICC at the time of entry into the State of Punjab. They further stated that the documents were handed over to them by the owner of the goods after they had entered into the State of Punjab.

4. Having reason to believe that it was a case of evasion of tax, he detained the goods and issued notice U/s 51(6)(b) of the Act to the owner of the goods. Failing to satisfy the Detaining Officer, the latter forwarded the case to the Designated Officer, who also issued notice to the owner of the goods u/s 51(7)(c) of the Act, in response to which the appellant failed to make any proper explanation. After providing reasonable opportunity of being heard, the Designated Officer vide order dated 31.1.2013, imposed a penalty of Rs. 2,84,282/- U/s51(7)(c) of the Punjab Value Added Tax Act, 2005 against the appellant.

5. The appeal filed by the appellant also could not carry any weight.

6. In order to assail the findings returned by the authorities below, the counsel for the appellant has urged that the appellant had purchased the goods from Haryana dealer who had issued two different bills after charging CST for sale from Haryana to Punjab. Necessary VAT D-3 forms as prevalent in Haryana were also issued on the strength of which the goods had crossed from Haryana border and reached Sardulgarh which is situated in the area of State of Punjab. The appellant, after taking delivery of goods at Sardulgarh, issued another two bills in favour of Mandi Govindgarh dealer as such the goods started for Mandi Gobindgarh in the same vehicle. Thus after the fresh bills were issued from Sardulgarh, it became intrastate transaction; as such no declaration was required to be made. Since, the goods were accompanied by genuine documents, therefore no offence Us51(2),(4) 6(a) or 6(b0 is made out. The transactions as entered into by the appellant stand supported by the account books. The assessee had issued C-form to Haryana dealer, the D-form issued by the State of Haryana in favour of the appellant proves one thing that the appellant could not keep the goods out of accont books. He has further argued that the case could be divided in two parts as in relates two transactions. First transaction stood completed after the goods sold by Sirsa dealer to the appellant stood completed at Sardulgarh much before reaching the ICC and the second transaction started from Sardulgarh when the new tills were issued pursuant to the contract with the appellant and Mandi Gobndgarh dealer. Since it was an intra state transaction, therefore, the question of reporting the goods at ICC Sardulgarh did not arise. It was also argued that the Assitant Excise and Taxation Commissioner, Mobile Wing, Bathinda had no jurisdiction to impose penalty upon the appellant.

7. To the contrary, Sh. N.K. Verma, Sr. Deputy Advocate Genera, Counsel for the appellant has placed on record, the copy of the road map from Sirsa to Mansa Bhikhi Road which is placed on record as Annexure X. Since the Road map is very relevant to decide the controversy, therefore, it is placed on record. Mr. Verma with the support of this Road map, has submitted that the goods started from Sirsa for Jhunir (Punjab), ICC Sardulewala falls on the way from Sirsa to Jhunir. From Sirsa, there is direct road connecting Mansa, Bhikhi Road and Sardulgarh, Sardulewala and Fatta Maloka fall on the way from Sirsa to Jhunir. Admittedly, the information was not generated and the drivers while carrying the goods in the same vehicles were caught at Jatana Kalan which is located at an escape route. The drivers were supplied two other invoices in favour of Mandi Gobindgarh dealer before they had reached their place of designation i.e. Jhunir. All this goes to show that the appellant had clear cut intention to evade the tax. As the drivers of the vehicles, after leaving the main road adopted an escape route via Bhunder, Rori and Jatana Kalan. If they had not been intercepted at Jatana Kalan, then they would have avoided ICC Sardulewala and the goods would have remained unreported at ICC, Sardulgarh. All this was done by them in order to keep the goods out of the account books. It was also admitted by Jaswant Singh and Sukhpal Singh, Drivers of the vehicles that they were handed over the documents by the owner of the goods near village Jatana Kalan, which is ahead of their place of destination.

8. Assuming for the sake of arguments, if the plea of the appellant that he had handed over the bills to the drivers at Sardulgarh in the State of Punjab and it was an intrastate transaction even then it is clear cut case of evasion of tax for the reason that the goods were tipped for Jhunir and ICC Sardulewala falls on Sirsa Jhunir Road and comes before one reaches at Jhunir. The appellant had no occasion or business to hand over the invoices at Sardulgarh and this story has been cooked up only to project that the transaction was intrastate. Secondly if the invoices had been handed over to the drivers at Sardulgarh, even then there was to reasons for the drivers to adopt the escape route via Bhunder Rori and Jatana Kalan. All this goes to show that the appellant had planned an organized design to keep the goods out of account books with an intention to evade the tax. Consequently, no merit could be found in the contentions raised by the appellant.

9. Now coming to the next contention that the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda was not vested with the power U/s 51 of the Act, therefore, he was not competent to try the case against the appellant. Having heard this contention, the same does not weigh with the mind of this Tribunal. Vide notification No. S.O. 14/P.O.5/2005/S.3/2005, dated 31.3.2005, the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda was empowered to Act as Designated officer under Sections 29, 30, 32, 39, 40, 46, 47, 49, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61 and 66 within the area of jurisdiction as specified by the commissioner. Pursuant to this notification, the Excise and Taxation Commissioner, Punjab conferred the jurisdiction U/s 51 of the Punjab Value Added Tax Act, 2005 to the following Assistant Excise and Taxation Commissioners of Mobile Wing. The Notification reads as under:-

ORDER

"Whereas Notification No. S.O.14/P.O.5/2005, dated 31st March, 2005, empowers the Commissioner to allocate jurisdiction in writing to the Excise and Taxation Officers, Mobile Wing for the purpose of section 51 of the Punjab Value Added Tax Act, 2005. I, D.P. Raddy, I.A.S. allocate the jurisdiction as under:-

Sr. No.	*Designated of Officer*	*Area of jurisdiction*
1.	*Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala*	*Districts of Patiala and Sangrur.*
2.	*Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh.*	*Districts of Ropar, Mohali and Fatehgarh Sahib.*
3.	*Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana*	*Districts of Ludhiana-I, Ludhiana-II and Ludhiana-III.*
4.	*Asistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar*	*Districts of Jalandhar-I, Jalandhar-II, Hoshiarpur and Nawan Shahar.*
5.	*Assistant Excise and Taxation Commissioner, Mobile Wing, Amritsar.*	*Districts of Amritsar-I, Amritsar-II and Gurdaspur.*
6.	*Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda.*	*All Districts of Ferozepur and Faridkot Divisions.*

However, their jurisdiction U/s 46, 47, 49, and 66 of the Punjab VAT Act, 2005 shall be for the whole of the State of Punjab.

Patiala *Sd/-*
Dated: 23.05.06 *(D.P. Raddy)*
Excise and Taxation Commissioner, Punjab

10. Admittedly the Bathinda is a part of the Faridkot Division, therefore, undoubtedly, the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda is competent to try the case U/s 51 of the Act against the appellant. No challenge has been made to the authority of Excise and Taxation Officers posted in all the Mobile Wings to excise powers of checking U/s 51 of the Punjab Value Added Tax Act, 2005 through out Punjab. Notification dated 20.8.2006 in this respect has also been placed on record. In these circumstances, it would be misnomer to say that the Assistant Excise and Taxation Commissioners of Mobile Wing, Bathinda was not

competent to try the case U/s 51 of the Punjab Value Added Tax Act within the area of his own District.

11. No other argument has been raised.

12. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 156 OF 2015

HINDUSTAN UNILEVER LTD.
Vs
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

17th November, 2016

HF ▶ Revenue

Penalty is upheld as there is enough evidence to show that escape route taken by driver was with intention to evade tax.

PENALTY – ATTEMPT TO EVADE TAX - CHECK POST/ ROAD SIDE CHECKING – ESCAPE ROUTE – GOODS IN TRANSIT FROM MAHARASHTRA TO PUNJAB – VEHICLE APPREHENDED – DOCUMENTS PRODUCED – ADMISSION BY DRIVER REGARDING TAKING OF ESCAPE ROUTE ON INSTRUCTIONS OF APPELLANT – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – HELD: CONTENTION THAT DRIVER WAS NEW TO THE AREA NOT EVIDENCED – NOTHING TO SHOW THAT TRANSACTION STOOD RECORDED IN CENTRAL EXCISE REGISTER – REPORTING AT ICC IS MANDATORY – INTENTION TO EVADE TAX IS EVIDENT FROM CIRCUMSTANCES AS NO INFORMATION WAS GENERATED AT ANY ICC – APPEAL DISMISSED – *S.51 OF PVAT ACT, 2005*

Facts

The goods loaded in a vehicle were in transit from Maharashtra to Punjab. They were apprehended by the Mobile Wing Officer. The driver produced the Invoice and GR and admitted that he had taken the escape route without generating the documents at the ICC as per the instructions of the appellant. The appellant failed to produce account books for verification of the said invoice. Penalty u/s 51 was imposed. An appeal was filed before Tribunal contending that mere non- reporting at ICC should not attract penalty when the goods were otherwise excisable and payments were made by banking channel etc.

Held:

The goods were not reported anywhere in Maharashtra nor while entering into Punjab. The contention that driver was new and did not know about the route is not supported by any evidence. There is nothing on record to show that transaction was recorded in Central Excise Register as alleged by appellant.

It is mandatory to report the goods at nearest ICC as per the provisions of the Act. As the driver nowhere generated the information about the goods, it is inferred that the intention to keep transaction out of books is a motive to evade tax. Findings of authorities below are well reasoned; the appeal is dismissed.

Cases referred:

- *Krish Pack vs. State of Punjab (2006) 9 STM 904 HC (P&H)*
- *The State of Punjab vs. Dashmesh Tranders, Sri Ganganagar (Rajashthan) (2011) 17 STM 231 PVAT Tribunal*
- *Auto Mobile Products of India Pvt. Ltd. vs. State of Karnataka (81 STC 414 Kar) and (2007) VST 363 (P&H)*
- *Makin Paper Mills Vs. State of Punjab.*
- *Amrit Banaspati Ltd. vs. State of Punjab 122 STC 323.*
- *Hindustan Unilever Limited vs. State of Punjab decided on 24.10.016.*
- *Benipal Steel Industries vs. Deputy Excise and Taxation Commissioner, Jalandhar and others (2011), 38 VST 350.*
- *Mohan Fibre Products Ltd. vs. State of Punjab and others (2010) 30 VST 536.*
- *Rajiv Enterprises vs. State of Punjab and another (2010) 35 VST 148.*

Present: Mr. Sandeep Goyal, Advocate alongwith Mr. Rohit Gupta, Advocate Counsel for the appellant.

Mr. N.K. Verma, Sr. Dy., Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. The Excise and Taxation Officer/Designated Officer vide order dated 31.1.2014 imposed penalty to the tune of Rs. 6,95,100/- U/s 51(7)(c) of the Punjab Value Added Tax Act, 2005. The appeal filed by the appellant against the said order was dismissed on 26.12.2014.

2. The crucial question involved in this case is, "whether non furnishing of information at the nearest ICC regarding the goods carried by the appellant is subject to penalty?"

3. On 15.1.2014, when Sh. Kuldeep Singh Dhaliwal, Excise and Taxation Officer, Mobile Wing, Chandigarh at Mohali was present near Samana Bridge (Patiala), he intercepted a vehicle bearing No. PB-11BF-6578 loaded with tomato paste. When the driver was confronted with the genuineness of the transaction, he disclosed that the goods were being transported from Dindori Nashik (Maharashtra) to Rajpura, District Patiala (Punjab). He also produced the following documents:-

1. Invoice No. 186, dated 12.1.2014 issued by Varun Agro Processing Foods Pvt. Ltd., Dindori Nashik in favour of the appellants for Rs. 13,90,059/- and
2. GR No. 869525, dated 12.1.2014 for the transportation of goods from Nashik to Rajpura.

4. The driver further admitted that as per directions given by the owner of the goods, he did not generate the information about the transaction at the ICC Khanauri (Punjab) while entering into the State of Punjab. The Detaining Officer detained the goods on the ground that the same being meant for trade, were being transported through an escape route without generating the information regarding the transaction at ICC, Khanauri and issued notice to the owner of the goods for 16.1.2014. He also recorded the statement of the driver who admitted that no information was generated at the ICC.

5. On 17.1.2014, Sh. Sushil Kumar and Rajesh Korde appeared before the Designated Officer but failed to produce any documents to prove the genuineness of the transaction. However, the appellant got the goods released on 18.1.2014. Consequently he forwarded the case to the Designated Officer who also issued notice to the consignee for appearing on 31.1.2014. Pursuant to the said notice, Sh. Sushil Kuamr Singla, Commercial Executive of M/s

Hindustan Unilever Limited, Rajpura appeared, but failed to produce any account books for verification of the invoice in question. Mr. Sushil Kumar Singla also admitted that no information was given at the ICC by the Driver. After due enquiry, the Designated Officer while holding that the appellant had clear intention to evade the tax by not generating the information at the ICC imposed penalty of Rs. 6,95,100/- U/s 51(7)(c) of the Punjab Value Added Tax Act, 2005 against the appellant. The appeal filed by the appellant against the said order also failed.

6. Hence this second appeal.

7. The counsel for the appellant has contended that the consignor and consignee in this case are the owners of excisable units. The consignor is required to maintain register i.e. RG 23A when the goods are dispatched. The entry in the present case was also made in register RG 23-A immediately after it was dispatched. The company also verified the goods before it reached the destination. Since the appellant was entitled to CENVAT credit, therefore, he was not to be benefited by keeping the goods out of the books. The appellant company is the biggest FMCG Company, it can't afford to keep the transaction out of books since it is working in a impersonal mechanism. The payments had been made through the banking channel and the transactions are entered through SAP system. In such a huge setup, the department could not presume that the appellant wanted to evade the tax. The Designated Officer as well as the First Appellate Authority assigned no reasons for disagreeing with the submissions made by the appellant and the penalty was imposed merely on the ground that the driver had not generated the information at the nearest ICC. Mere non furnishing of the information at the ICC does not prove that there exists an intention to evade the tax. The goods were accompanied by the genuine documents. The transaction was against C-Form and CST W 2% has already been charged on the invoice value of the goods. The appellant did not adopt the escape route before or after crossing the ICC Khanauri. He has relied upon the following judgments:-

1. M/s Krish Pack vs. State of Punjab (2006) 9 STM 904 HC (P&H)
2. The State of Punjab vs. Dashmesh Tranders, Sri Ganganagar (Rajashthan) (2011) 17 STM 231 PVAT Tribunal
3. Auto Mobile Products of India Pvt. Ltd. vs. State of Karnataka (81 STC 414 Kar) and (2007) VST 363 (P&H) Makin Paper Mills Vs. State of Punjab.
4. Amrit Banaspati Ltd. vs. State of Punjab 122 STC 323.

8. On the record hand, the State counsel has submitted that the main object of furnishing of the information at the ICC is to inform the department of the transaction so as to add it into the turnover and make it taxable. Non furnishing of the information at the nearest ICC is not a sheer formality but it is mandatory provision of law as provided u/s 51(2) and (4) of the Punjab Value Added Tax Act, 2005. In violation invites adverse inference that the appellant wanted to keep the goods away from the account books with intention to evade the tax. The appellant did not inform at any ICC even in the State Maharashtra or in the State of Punjab from where it could be clearly inferred that the appellant wanted to evade the tax. As such the penalty so imposed was legally permissible. The State Counsel has also relied upon the following judgments in support of his contentions:-

1. M/s Hindustan Unilever Limited vs. State of Punjab decided on 24.10.016.
2. M/s Benipal Steel Industries vs. Deputy Excise and Taxation Commissioner, Jalandhar and others (2011), 38 VST 350.
3. M/s Mohan Fibre Products Ltd. vs. State of Punjab and others (2010) 30 VST 536.

4. M/s Rajiv Enterprises vs. State of Punjab and another (2010) 35 VST 148.

9. Arguments heard. Record perused.

10. Eighty drums of tomato paste were purchased from M/s Varun Agro Processing Foods Pvt. Ltd., Dindori Nashik (Maharashtra), pursuant to which an invoice dated 12.1.2014 was issued in favour of the appellant. The goods were dispatched from Maharasthra for the premises of the appellant in Punjab. The driver carrying the goods in the truck No. PB-11BF-6578 completed the journey within three days and when he reached Samana Bridge in the area of Patiala, he was intercepted. He had not generated the goods anywhere in the State of Maharasthra so at the entry point of the State of Punjab i.e. ICC khanauri. In his statement, the driver has disclosed that he acted according the directions of the owners.

11. No order of appointment of the driver has been placed on the record in order to support of the plea that he was newly appointed driver and he was new to the area. The other plea of the appellant is that since the goods were excisable and the excise duty paid, therefore no concealment of the transaction could be made, is also without any merit. There is nothing to show that this transaction was got recorded in the Central Excise Register. The main object of the generating the goods at the ICC is to check the suppression of the turnover. Had the truck not been apprehended then there was every chance of not entering the goods into the account books, therefore, evasion of tax could be made.

12. It is apparent from the record that the driver had crossed the ICC without generating VAT-XXXVI at the entry point of State of Punjab and had reached Samana Bridge in the vicinity of Patiala. Section 51(7)(c) of the Act issued a mandate regarding furnishing of necessary documents generate information at the ICC regarding transporting of the goods and that if such officer is satisfied that the documents, as required under the Sub-section (2) & (4) were not furnished at the Information Collection Centre or the check post as the case may be, with a view to attempt or avoid tax due or likely to be due under the Act, then for reasons recorded in writing, impose on the consignor or the consignee of the goods, penalty equal to 50% of the value of the goods involved. It is also evident from the provisions of the law that it was mandatory on the part of the appellant to report about the goods carried by him at the nearest check post as contemplated u/s 51(2) of the Act. The intention of the appellant to evade the tax is proved from the circumstances that the driver from the very inception of his three days journey i.e. from Dindori till he reached Samana Bridge, he did not generate the information at any ICC in any State falling on the way. As such it would be inferred that he had the requisite intention to keep the goods out of the account books with a motive to evade the tax. The Designated Officer after pursing the record and statement of the driver was satisfied that since the latter did not stop the vehicle and crossed the ICC without generating any information at the ICC, therefore, he had the requisite intention to evade the tax.

13. The Tribunal is not convinced with the contentions advanced by the counsel for the appellant and has no reasons to differ with the findings returned by the authorities below. Reliance if any could be placed upon the judgment delivered in case of M/s Rajiv Enterprises vs. State of Punjab and another where in the similar circumstances, the Division Bench observed as under:-

> ***"****I am fully convinced that the goods amounting to Rs. 3,59,476/- are taxable, meant for trade and the dealer has tried to evade the payment of tax by transporting the goods for trade without proper and genuine documents and without furnishing information of goods at any ICC of the State of Punjab."*

14. Similar view was taken in case of M/s Mohan Fibre Products Ltd. vs. State of Punjab and another decided on 9.3.2010 wherein there lordships observed as under:-

> *"Therefore, we see no legal infirmity in the findings recorded by the appellate authorities. Once, it is proved that neither the assessee reported the goods meant for trade at the ICC barrier adopting the escape route nor produced the indicated relevant documents before the Detaining or Designated officer, then the intention of the assessee to avoid/evade the tax is inevitable, in the obtaining circumstances of the case. Therefore, it is apparent from record that the driver, who was person incharge of the goods of the assessee, did not stop his vehicle despite signal. It was chased and brought back to the ICC barrier. The driver failed to produce the relevant documents, so much so the assessee did not produce any material before the Designated Officer to prove the genuineness of the transaction, despite adequate opportunities. All these facts cumulative put together, then the conclusion of evading or avoiding the tax is in evitable. Hence, it is held that the assessee has contravened/violated the provisions of the Act and the authorities below have rightly imposed the penalty on it (assessee), in the obtaining circumstances of the case."*

15. In another case Benipal Steel Industries vs. Deputy Excise and Taxation Commissioner, Jalandhar and another (2011) 38 VST 350 took the same view. In this case, the appellant failed to produce any account books before the Detaining Officer despite opportunity given to it however, any copy of the account book furnished later after long time would be treated as manipulated / procured in order to make a false defence.

16. As regards, the plea that the driver bringing the goods was new to the place can't be accepted as it was a routine matter for the appellant to bring tomato paste from out side the State of Punjab. The record reveals that prior to 15.1.2014 the goods were brought on 1st to 5th January, 7th to 9th January, 11th to 13th January, therefore the driver bringing the goods can't be said to raw hand. Even otherwise, no document has been placed on the record in order to establish that the driver was recently appointed.

17. As regards, the judgment delivered by the Division Bench in case of Krish Pack Industries vs. State of Punjab, the orders passed by the Tribunal were set-aside only on the ground that the documents on the record were not considered but it had decided the case merely on the basis of the admission of the driver. But in the present case, all the documents mentioned at serial No. 2 to 21 consisting of 27 pages have been perused. Many of the documents are not relevant to the case and documents alleged at serial No. 3, 6, 14, 19 and 20 are the copies of the same document. In any case, the Tribunal has perused all the documents but the same do not help the case of the appellant in any manner.

19. As regards the judgment delivered in case State of Punjab vs. Dasmesh Traders, the Designated Officer had misread the documents. The driver had also stated that since there were no signatures of the driver under the statement, therefore it can't be treated as a valid admission made by him. In these circumstances, the appeal of the state was dismissed. The other judgments cited by the Counsel for the appellant are also on their own facts as such the same are not applicable to the facts of the present case.

20. Having examined the judgments passed by the authorities below, the same appear to be well reasoned and have been passed after considering the pleas setup by the appellant before them, therefore, the same being well founded to not call for any interference at my end.

21. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

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EXTENSION IN DATE FOR IMPLEMENTATION OF HARYANA ALTERNATIVE TAX COMPLIANCE SCHEME FOR CONTRACTORS, 2016

EXCISE & TAXATION COMMISSIONER, HARYANA, PANCHKULA.

Memo No. Spl-1/(P/R) Panchkula dated 11.12.2016

Extension in date for implementation of Haryana Alternative Tax Compliance Scheme for Contractors, 2016

As you must be aware that application in form TC 1 for opting the Haryana Alternative Tax Compliance Scheme for Contractors, 2016 may be submitted online within 90 days from the date of notification i.e. 12.09.2016. The said period of 90 days expires on 11.12.2016. But 11th and 12th December, 2016 being holiday, it is clarified that next working day on 13.12.2016 will be treated as the last date within which the application in form TC1 may be submitted online. This shall be brought to knowledge of all concerned.

Addl. Excise & Taxation Commissioner (P/R), for Excise & Taxation Commissioner, Haryana, Panchkula.

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NOTIFICATION REGARDING THE HARYANA TAX ON LUXURIES (AMENDMENT) ACT, 2016

PART I
HARYANA GOVERNMENT
LAW AND LEGISLATIVE DEPARTMENT

Notification

The 26th September, 2016

No. Leg. 32/2016.—The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 16th September, 2016 and is hereby published for General information:—

HARYANA ACT NO. 28 of 2016

THE HARYANA TAX ON LUXURIES (AMENDMENT) ACT, 2016

AN

ACT

further to amend the Haryana Tax on Luxuries Act, 2007.

Be it enacted by the Legislature of the State of Haryana in the Sixty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act maybe called the Haryana Tax on Luxuries (Amendment) Act, 2016.

Amendment of section 2 of Haryana Act 23 of 2007

2. In section 2 of the Haryana Tax on Luxuries Act, 2007 (hereinafter called the principal Act), after clause (g), the following clause shall be inserted, namely:-

'(gg) "electronic governance" means the use of electronic medium for,-

(i) filing of any form, return, annexure, application, declaration, certificate, memorandum of appeal, communication, intimation or any other document;

(ii) creation, retention or preservation of records;

(iii) issue or grant of any form including statutory declaration form, order, notice, communication, intimation or certificate; and

(iv) receipt of tax, interest, penalty or any other payment or refund of the same through Government treasury or banks authorized by the Government treasury.'.

Amendment of section 8 of Haryana Act 23 of 2007

3. In section 8 of the principal Act,-

(i) in sub-section (1), for the sign existing at the end, the sign shall be substituted; and

(ii) after sub-section (1), the existing proviso shall be omitted.

Amendment of section 9 of Haryana Act 23 of 2007

4. In section 9 of the principal Act,-

(1) in sub-section (1), for the sign existing at the end, the sign shall be substituted; and

(ii) after sub-section (1), the existing proviso shall be omitted.

Amendment of section 10A of Haryana Act 23 of 2007

5. After section 10 of the principal Act, the following section shall be inserted, namely:-

"10A. Payment of lump sum in lieu oftax.-(l) The State Government may in public interest and subject to such conditions, as it may deem fit, accept from any class of proprietors, in lieu of tax payable, for any period, by way of composition, a lump sum linked with some suitable measures of extent of business, or calculated at a flat rate of gross receipts of business with or without any deduction therefrom, to be determined by the State Government. The lump sum amount shall be paid at such intervals and in such manner, as may be prescribed. The State Government for the purposes of this Act, in respect of such class of proprietors may, prescribe, simplified maintenance of accounts and filing of returns which shall remain in force during the period of such composition.

(2) A proprietor in whose case composition under sub-section (1) is made and is in force may, subject to such restrictions and conditions, as may be prescribed, opt out of such composition by making an application containing the particulars in the prescribed manner, to the assessing authority and in case the application is in order, such composition shall cease to have effect on the expiry of such period.".

Amendment of section 11 of Haryana Act 23 of

6. In section 11 of the principal Act, for sub-sections (7), (8) and (9), the following sub-sections shall be substituted, namely:-

"(7) The assessing authority, on information furnished to him under section 24, shall by an order, amend or cancel any certificate of registration and such amendment or cancellation shall be effective from the date, as may be prescribed.

(8) In case-

(a) any business in respect of which certificate has been granted, has been discontinued; or

(b) the liability to pay tax of any proprietor ceases under the Act,

the assessing authority shall, after giving a reasonable opportunity of being heard to the affected person, by an order, cancel the certificate of registration.

(9) An officer not below the rank of Deputy Excise and Taxation Commissioner incharge of the district may, in such manner, subject to

such restrictions and conditions, as may be prescribed, cancel the certificate of registration.

Amendment of section13 of Haryana Act 23 of 2007

7. In section 13 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Notwithstanding anything contained in section 14, every proprietor liable to pay tax under this Act or such proprietor, as may be required so to do by the assessing authority by notice in the prescribed manner, shall furnish to the assessing authority, within a period of sixty days of the expiry of the year, a return in such form, as may be prescribed.".

Amendment of section 14 of Haryana Act 23 of 2007

8. In section 14 of the principal Act,-

(i) in the marginal heading, the words "in advance" shall be omitted; and

(ii) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Every proprietor liable to pay tax under this Act or such proprietor as may be required so to do by the assessing authority, by notice in the prescribed manner, shall furnish to the assessing authority within a period of fifteen days of the expiry of a month, a statement in such form as may be prescribed, showing therein the whole amount of tax due from him according to such statement.".

Amendment of section 33 of Haryana Act 23 of 2007

9. In section 33 of the principal Act,-

(i) in the marginal heading, for the words "Rectification of mistake", the words "Rectification of clerical mistakes" shall be substituted; and

(ii) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) Any assessing authority or appellate authority may, at any time, within a period of two years from the date of supply of copy of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the record of the case:

Provided that no order shall be passed under this section without giving a person adversely affected thereby, a reasonable opportunity of being heard.".

Amendment of section 34 of Haryana Act 23 of 2007

10. For section 34 of the principal Act, the following section shall be substituted, namely:-

"Refund of excess tax, penalty and interest.- (1) The assessing authority shall refund to a proprietor the amount of tax including the amount of penalty and interest paid by him in excess of the amount due from him under this Act and such refund may be made by way of refund order or by way of adjustment order; provided that refund can be claimed only by a person who has actually suffered the incidence of tax and the burden of proving the incidence of tax so suffered, shall be on him.

(2) Where any amount refundable to any person under an order made under any provisions of this Act is not refunded within a period of ninety days of the date of such order, the assessing authority shall pay simple

interest at the rate of twelve percent per annum on the said amount from the date immediately following the expiry of the said ninety days to the day of the refund:

Provided that the interest shall be calculated on the balance of the amount remaining after adjusting out of refundable amount, any tax, penalty or other amount due under this Act, for any year by a person on the date from which such interest is calculable.

Explanation.-If the delay in granting the refund within the aforesaid period of ninety days is attributable to the person to whom the refund is payable, the period of such delay shall be excluded for the purpose of calculation of interest.

(3) Notwithstanding anything contained in sub-section (1) where an order giving rise to refund is the subject matter of an appeal or any further proceedings and the assessing authority is of the opinion that the grant of the refund is likely to adversely affect the state revenue, the said officer may, with the previous approval of the Commissioner, withhold the refund till such time, as the Commissioner may determine.".

Insertion of Section 40A and 40B in Haryana Act 23 of 2007

11. After section 40 of the principal Act, the following sections shall be inserted, namely:-

"40A.Implementation of electronic governance.-(l) Notwithstanding anything contained in this Act or the rules framed thereunder, the Commissioner may, by an order, with the approval of the State Government, implement electronic governance for carrying out the various provisions of this Act and the rules framed thereunder.

(2) Where an order has been passed under sub-section (1), the Commissioner may, amend or introduce forms for returns, applications, declarations, annexures, memorandum of appeal, report of audit or any other document which is required to be submitted electronically.

(3) The Commissioner may, for reasons, to be recorded in writing, extend or reduce the period prescribed under this Act and the rules framed thereunder for electronic governance.

"40B. Automation.-(1) The provisions contained in the Information Technology Act, 2000 (Central Act 21 of2000), and the rules framed and directions given thereunder, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgment and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates, shall, apply to the procedures under this Act and rules framed thereunder for electronic governance.

(2) Where any return, annexure, report of audit, document, application, form including statutory declaration form, certificate, communication or intimation of a proprietor is received electronically through the official website, such return, annexure, report of audit, document, application, form including statutory declaration form, certificate, communication or intimation shall be deemed to have been submitted by such proprietor with his consent.

(3) Where a certificate of registration, order, form including statutory declaration, certificate, notice and communication is prepared on any

automated data processing system and is sent to any proprietor, then, the said certificate of registration, order, form including statutory declaration, certificate, notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the certificate of registration, order, form including statutory declaration, certificate, notice or communication shall not be deemed to be invalid only on the ground that it has not been personally signed by the Commissioner or any other officer subordinate to him.".

KULDIP JAIN,
Secretary to Government Haryana,
Law and Legislative Department.

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MAJOR PART OF GST LAW GETS GREEN SIGNAL AT COUNCIL MEET

The thornier issue of division of tax administration between the centre and states that can possibly delay the implementation of the new tax regime will be taken up on Friday.

NEW DELHI: The Goods and Services Tax Council on Thursday cleared a substantial part of the central legislation for the proposed tax regime, marking a significant progress towards this reform.

The thornier issue of division of tax administration between the centre and states that can possibly delay the implementation of the new tax regime will be taken up on Friday.

"A substantial part of the C-GST law barring four to five clauses where we need some more deliberations have been cleared...The council has reached broad consensus on the law," a government official said after the first day of the GST Council meeting, not wanting to be named.

The C-GST law refers to the central GST law, which will be complemented by state GST laws and an integrated GST law that deals with inter-state delivery of goods and services.

The government is keen to roll out the new regime from April 1, 2017, but now the deadline looks difficult. July 1, as suggested by the industry, may be more feasible.

The council has to clear drafts of C-GST, integrated GST legislation and another one for compensation for any revenue loss incurred by states on implementing the new tax regime.

The legislation is simultaneously being vetted by the law ministry and changes suggested will again be presented before the council.

These legislations will have to be cleared by parliament before the government can roll out the goods and services tax, which replaces a number of indirect central and state taxes nationwide.

The state GST law would be modelled on the central GST law and will need to be cleared by state legislatures.

TAX ADMINISTRATION

The division of tax administration between the states and the centre has emerged as a knotty issue with states such as West Bengal wanting complete control over the administration of assesses below the turnover of `1.5 crore.

The centre, on the other hand, is keen on equal division of all assesses between the two authorities to ensure single interface with any one authority in line with constitutional amendment. It has mooted the idea of crossempowerment wherein both authorities can work in tandem on key functions of audit and registration of new assesses.

The centre is of the view that while it is ready to empower state authorities, it itself cannot be disempowered based on the constitutional amendment.

Finance minister Arun Jaitley earlier said that the government had some ideas that could help resolve the issue.

Courtesy: The Economic Times
23rd December, 2016

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GST COUNCIL CLEARS LAWS, STUCK ON DUAL CONTROL

In a significant headway, the GST Council in its seventh meeting today approved in principle the draft Central and State GST laws. However, the issues of dual control and cross empowerment are yet to be decided and would be taken up at the next meeting on January 3-4.

Finance Minister Arun Jaitley said the draft CGST and SGST laws, a total of 197 provisions and five schedules, had been approved and only the issues of dual control and cross empowerment were left.

Jaitley said the GST Council also decided that the compensation mechanism would be to allow bi-monthly payment to states instead of previously decided quarterly payment. He said a parallel exercise of the fixation of the rates for different items would be taken up later.

Jaitley indicated that the language for the source of compensation to the states had to be decided upon and once that is done it would be put before the states.

On being asked whether the April 1 deadline still stands, he said, "I am trying my best to do that...left to myself, I would like to do that… We don't want to hasten the process of discussion. But we don't want to delay implementation either".

Some states have objected to the levy of cess to give compensation on account of loss due to GST. Andhra Pradesh Finance Minister Yanamala Ramakrishnudu said the proposal to levy cess on certain goods, instead of compensating from the revenues of Consolidated Fund of India of the Union is not at all justified.

He said Andhra Pradesh did not accept levy of cess by the Centre on certain goods to compensate the states for loss of revenue arising out of implementation of GST in the five years starting from 2017-18.

Courtesy: The Tribune
23rd December, 2016

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SIGNS OF THAW SEEN ON GST ISSUES, STATES MAY GET RELIEF FROM CENTRE TO OFFSET DEMONETISATION-LED LOSS

NEW DELHI: The prospects of early roll out of goods and services tax (GST) brightened with the states and the Centre making progress on a crucial legislation, amid indications that the states may get concessions to tide over possible demonetisation-related revenue loss.

On Thursday, the first day of the two-day meeting of the GST Council, consensus was reached on most of the clauses of Central GST law. Out of 193 clauses, only those related to dual control are left, sources said after the meeting.

Those tracking GST closely saw it as a significant development given that the last Council meeting had to be called off after the first day, amid strong criticism from states led by West Bengal over the Centre's demonetisation drive. West Bengal has been at the forefront of protests against demonetisation of Rs 500 and Rs 1,000 notes with its finance minister Amit Mitra arguing that state revenue had been hit hard and could come under further pressure after GST rollout.

Mitra played down suggestions that significant headway was made. "There we re many suggestions from across states and across political parties on GST draft laws and the Centre had to accept many of the suggestions. Several items on the draft law had to be kept in the backburner. The issues will be studied and it was decided that they will be discussed in the January meeting. The studies will be presented before the GST Council for further discussion. Therefore the GST draft laws have yet not bee ..

Mitra said states also want a say in IGST (Integrated GST). "It is critical for the sake of federalism and operational success for states to have cross empowerment in inter-state trade. This matter was not even discussed today."

The Bengal FM said the Centre may have to find additional resources to help states meet any revenue loss due to demonetisation. "Many states across political parties are deeply concerned that their tax collection is going to drastically fall and as a result the compensation from the Centre will have to exceed the Rs 55,000 crore planned earlier. The question is cesses cater to such a large need of the expected compensation and therefore the Centre will have to find additional resources to fund t ..

The Centre is indicating that it is willing to look at so me of the measures to help states tide over the temporary disruption. The most contentious issue of dual control is expected to be discussed in January .

State government sources said there were also concerns over some of the proposals related to the compensation formula suggested by the Centre, which has promised to cover potential losses during the first five years of rollout.

Sources said the GST Council may also look at some of the issues related to the financial services sector. Several service sector entities have been pitching for a centralised registration instead of registering in every state.

Courtesy: The Economic Times
24th December, 2016

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ABOUT 75 PER CENT OF TARGETED 60,000 OFFICERS TRAINED FOR GST

NACEN data stated that 2,060 'trainers' have been trained against the target of 1,600.

Uncertainty over the rollout date of Goods and Services Tax (GST) notwithstanding, the National Academy of Customs, Excise and Narcotics (NACEN) has already trained about three-fourth of the targeted 60,000 field officials who would be instrumental in implementing the new indirect tax regime. NACEN has been tasked with the mammoth training target of 60,000 officials of both the Centre and states.

As per the latest data (up to December 17) of NACEN, 44,259 field officers have been trained. The government intends to roll out the GST regime from April, but there are apprehensions that the date would be missed because the all powerful GST Council is yet to iron out several vexed issues, including jurisdiction of Centre and state governments over tax payers.

The Council, headed by Union Finance Minister Arun Jaitley and comprising state finance minister, has so far met seven times after Parliament amended the Constitution for implementation of GST. The next meeting is scheduled for January 3 and 4 to decide on the contentious issue of dual control over assessees and the legislation on IGST.

NACEN data further stated that 2,060 ‘trainers’ have been trained against the target of 1,600. Similarly 310 ‘master trainers’ have been skilled, thus surpassing the target of 300. As many as 36 officers from the Comptroller and Auditor General (CAG) to have been imparted the necessary training.

CBEC officials have already been deputed to the GST Network, the IT backbone of the new indirect tax regime.

Courtesy: The Indian Express
25 December, 2016

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GST: 15-DAY SLOT GIVEN FOR AP DEALERS TO REGISTER

They have to visit the site www.gst.gov.in for registration

All the 2.1 lakh dealers in the State and about 28,000 in Visakhapatnam city have to get their provisional registration under the Goods and Services Tax Act, done by January 15.

The Central government has allotted a 15-day time slot period beginning January 1 to Andhra Pradesh, and all the dealers have to visit the site www.gst.gov.in to upload the required documents such as Aadhaar card, PAN card and other details, to get the provisional registration, said Deputy Commissioner Commercial Tax Department K. Nagendra, here on Monday.

According to him, the Commercial Tax Department will send the provisional user id and password for logging into the GST website to the registered email and mobile number of the dealers and they can use the same to login to the site. So far about 60 per cent of the dealers have sent their mobile and email ids to the department and the deadline is Dec. 31.

According to Mr. Nagendra, the constitutional amendment for the GST Bill was passed by Parliament and already approved by majority of the States in the country.

"The Act will come into force from April 1," he said.

The entire process is online and user friendly. The dealers have been sensitised through a number of workshops and if they still have doubts they can contact the respective Commercial Tax Officers or approach the helpdesk. They can also login to www.apcity.gov.in for further information, K. Durga Surekha, CTO of Dwarakanagar area, told The Hindu.

Talking on the impact of GST on the State, Mr. Nagendra said the average annual revenue generated from the department was about Rs. 32,000 crore in the State, and the share of Visakhapatnam district was about Rs. 10,000 crore, with Rs. 8,000 crore coming exclusively from the oil sector.

Post GST, the revenue might come down slightly, but the Central government has assured to meet the deficit every two months.

Explaining the GST module, Mr. Nagendra said as of now there are about 12 types of taxes like VAT, Luxury tax and CST and dealers have to file separate returns for each of them. But with the implementation of GST, all the tax components will be withdrawn and there will be just one tax (GST) and the dealers have to file just one return and that to online. The GST collected will be shared between the State and the Centre.

Courtesy: The Hindu
26th December, 2016

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'GST WILL RESULT IN HIGHER TAX BURDEN FOR CONSUMERS INITIALLY'

HYDERABAD, DECEMBER 26: The Goods and Services Tax (GST) is not something that consumers could care to wait for as tax practitioners foresee a higher tax burden initially.

"Tax rates may come down later. But in the initial two years, it would put additional burden on consumers," MVK Murthy, National President of All-India Federation of Tax Practitioners (AIFTP), said.

The federation felt that implementation of GST from April 1, 2017, was not possible. "It might happen in September," he said.

Stating that there won't be much difference between the Value-Added Tax (VAT) that was in vogue and GST, he said both systems had multiple tax rates on goods. "Multiple tax rates could lead to disputes on classification of these goods. Also, they have left liquor, tobacco and petroleum, which attract higher tax rates, out of the purview of the GST," he said.

The services component of GST could end up with higher tax rates for consumers as the initial rate proposed was higher than that charged now.

"The GST is being rolled out in 140 countries but only two countries have dual (Central and State level) GST. India is going to be the third country after Australia and Canada to have such a dual GST system," he said. Murthy was in the city in connection with the South Zone conference of the federation.

The federation has over 7,000 members from different parts of the country. There are over 3.50 lakh tax practitioners in the country. "A Bill was introduced last year to regulate the tax practitioners," he said.

He said the process of registration by dealers, traders and tax practitioners was on under the GST regime. The federation has been conducting awareness programmes for traders, dealers and tax practitioners to throw light on the new tax regime.

"As far as trade is concerned, there's no change in VAT and GST regimes. States are going to lose the power to (levy) tax in the post-GST regime. States will have to depend on the GST Council's nod on issues related to tax rates," he said.

Courtesy: BusinessLine
26th December, 2016

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GST HITS A FRESH HURDLE

Dec 27, 2016, DHNS : Last week's meeting of the Goods and Services Tax (GST) Council has resolved some outstanding issues related to the implementation of the proposed tax regime but there are some others that remain to be sorted out. Fresh issues have cropped up too. There was expectation that full agreement would be reached between the Centre and the states on all aspects of the GST and the enabling legislations could be introduced and passed in the winter session of Parliament. But this did not happen. The latest Council meeting, however, agreed on the drafts of the Central and state GST bills and on the period of compensation payment to the states, which would now be two months instead of three. Some states like West Bengal and Tamil Nadu have raised concerns over compensation because of the impact of demonetisation on revenue estimates. However, the Centre has reassured the states of full compensation for the loss attributable to GST implementation. A compensation package of Rs 55,000 crore had been agreed upon but the Centre has said that it is not an upper limit.

The areas where progress has to be made concern the draft of the integrated GST law and dual administrative control. As Union Finance Minister Arun Jaitley stated, there is only one law but there are two bureaucracies at the central and state levels. Their jurisdictions will have to be divided for audit management. Tax payers should not be made to deal with two sets of officials for the same tax. Any confusion in this respect may lead to conflict and harassment of tax payers. A simple and efficient system of controls and division of powers will have to be evolved for this. Integrated GST is about supplies between states. The Centre will levy taxes on them and share them with the states. Norms for this also have to be agreed upon.

The contentious issues are expected to be taken up in the next GST Council meetings on January 3 and 4. Even if the differences are resolved then, there are doubts about the roll out of the GST on April 1. The Centre has said that best efforts would be made to meet the deadline. But some states have sought postponement of the date to July 1. The laws have to be passed by Parliament and state Assemblies and rules have to be framed, apart from tackling the post-demonetisation concerns. The infrastructure will also have to be ready. So it is likely that the launch date may be pushed to July or even September. There is also a view that the extension of deadline can be used for better preparations.

Courtesy: DH
27th December, 2016

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REAL ESTATE UNDER GST WOULD HAVE AFFECTED MIDDLE CLASS: ZENITH

SHILLONG: Taxation Minister Zenith Sangma on Monday asserted that the middle class and the lower middle class would have felt the heat had the real estate sector come under GST.

The Minister was speaking after the Centre dropped its proposal to bring real estate under the GST ambit after several states were opposed to it.

"The Centre had proposed to bring real estate under GST, which the states vehemently opposed, and thus the proposal was dropped. If it had happened, the pressure would have come on the middle class and the lower middle class people as the burden would have been shifted to purchasers. Moreover, this will not go well in the land tenure system in the Sixth Schedule states like us," said Sangma.

Another hurdle for the GST council is the cross empowerment and the Council has decided to meet on January 3-4. Meghalaya and a few other northeastern states had disagreed over certain issues taken up in the GST Council meet.

Courtesy: The Shillong Times
27 December 2016